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IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION

-----  
UNITED STATES OF AMERICA,       )  
                                  PLAINTIFF,       )  
  )  
V.                                       ) CASE NO. 3:10-00009  
  )  
JEREMY SETH TUMMINS,            )  
                                  DEFENDANT.       )  
-----

TRANSCRIPT OF PROCEEDINGS

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DATE:                           APRIL 15, 2011  
TIME:                           1:30 P.M.  
BEFORE:                       HONORABLE WILLIAM J. HAYNES, JR.  
-----

COURT REPORTER:           PEGGY G. TURNER  
                                  OFFICIAL COURT REPORTER  
                                  801 BROADWAY, ROOM A-837  
                                  NASHVILLE, TENNESSEE 37203  
                                  PHONE: (615)726-4893  
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A P P E A R A N C E S:

FOR THE PLAINTIFF: MATT EVERETT  
ASSISTANT U.S. ATTORNEY  
NASHVILLE, TN

FOR THE DEFENDANT: TIMOTHY POTTER  
HILLARY DUKE  
ATTORNEYS AT LAW  
NASHVILLE, TN

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W I T N E S S E S:

JOHN PATTERSON

DIRECT EXAMINATION BY MR. EVERETT PAGE 6

CROSS EXAMINATION BY MR. POTTER PAGE 28

REDIRECT EXAMINATION BY MR. EVERETT PAGE 48

1 P R O C E E D I N G S

2 THE CLERK: WE'RE HERE IN THE MATTER OF UNITED STATES  
3 OF AMERICA V. JEREMY SETH TUMMINS, CASE NUMBER 3:10-00009.  
4 COUNSEL, PLEASE ANNOUNCE WHO IS HERE AND ON WHOSE BEHALF.

5 MR. POTTER: TIM POTTER AND HILLARY DUKE, YOUR HONOR,  
6 FOR THE DEFENDANT.

7 MR. EVERETT: GOOD AFTERNOON, YOUR HONOR. MATT EVERETT  
8 FOR THE UNITED STATES.

9 THE COURT: GOOD AFTERNOON. ANY PRELIMINARY MATTERS  
10 BEFORE WE GET STARTED, EITHER SIDE?

11 MR. POTTER: I THINK THERE IS ONE PRELIMINARY MATTER,  
12 YOUR HONOR, MAY IT PLEASE THE COURT. AND THAT IS THE DEFENSE  
13 FILED A MOTION TO SUPPRESS, THE MOTION THAT IS BEFORE YOU TODAY.  
14 AND THIS ARISES FROM AN ALLEGED CUSTODIAL INTERROGATION THAT'S  
15 THE ISSUE IN DISPUTE. BUT WE DID NOT ATTACH TO OUR MOTION A  
16 COURT REPORTER TRANSCRIPT. THIS ENTIRE EVENT WAS AUDIOTAPED.  
17 THE GOVERNMENT FILED A RESPONSE AND PREPARED A TRANSCRIPT.

18 IN PREPARING FOR THIS HEARING, THE LAST COUPLE OF DAYS  
19 WE LOOKED AT THEIR TRANSCRIPT AND SAW THAT THERE ARE SOME  
20 DIFFERENCES IN THEIR TRANSCRIPT FROM THE COURT REPORTER  
21 TRANSCRIPT THAT WE HAVE. AND SO WE FILED THIS MORNING A COPY OF  
22 OUR COURT REPORTER TRANSCRIPT. I THINK THE GOVERNMENT OBJECTED  
23 TO THAT BECAUSE THEY GOT IT TODAY. I WOULD RESPECTFULLY ASK  
24 THAT IT BE ADMITTED, AND YOUR HONOR CAN DETERMINE, IN TAKING A  
25 LOOK AT THESE TRANSCRIPTS, WHICH ONES YOUR HONOR WANTS TO RELY

1 ON.

2 THE COURT: I THINK THE OBJECTION IS THAT THEY JUST  
3 DIDN'T HAVE AMPLE TIME TO REVIEW. THIS IS A MATTER THAT WILL  
4 PROBABLY BE TAKEN UNDER ADVISEMENT, SO I THINK WITH -- IS THERE  
5 ANY OBJECTION, MR. EVERITT, TO JUST RESERVING THIS? AND THEN IF  
6 YOU HAVE ANY OBJECTIONS, YOU ALL CAN -- IF YOU HAVE HAD  
7 ADDITIONAL TIME TO REVIEW IT?

8 MR. EVERETT: I THINK THAT WOULD BE APPROPRIATE, YOUR  
9 HONOR. MY OBJECTION, AS HE SAID, IS THAT IT'S 109 PAGES. AND  
10 IT CAME IN THIS MORNING.

11 THE COURT: YEAH, I UNDERSTAND.

12 MR. EVERETT: YES, SIR.

13 THE COURT: WELL, I WILL JUST RESERVE RULING ON THE  
14 MOTION TO STRIKE AND GIVE THE GOVERNMENT ADEQUATE TIME TO REVIEW  
15 THE TRANSCRIPT AND CHALLENGE ANY INACCURACIES.

16 MR. EVERETT: THANK YOU.

17 THE COURT: ANY OTHER MATTERS?

18 MR. POTTER: THAT'S THE ONLY PRELIMINARY MATTER, YOUR  
19 HONOR.

20 THE COURT: THE GOVERNMENT MAY CALL ITS FIRST WITNESS.

21 MR. EVERETT: YOUR HONOR, THE UNITED STATES CALLS  
22 DETECTIVE JOHN PATTERSON.

23 THE COURT: MR. PATTERSON, IF YOU WILL COME AROUND,  
24 PLEASE, SIR.

25 (WITNESS SWORN.)

1 COURT REPORTER: STATE YOUR FULL NAME AND SPELL YOUR  
2 LAST NAME, PLEASE.

3 THE WITNESS: JOHN LYLE PATTERSON, P-A-T-T-E-R-S-O-N.

4 DIRECT EXAMINATION

5 BY MR. EVERETT:

6 Q. GOOD AFTERNOON, DETECTIVE PATTERSON.

7 A. GOOD AFTERNOON.

8 Q. HOW ARE YOU CURRENTLY EMPLOYED?

9 A. I'M A DETECTIVE WITH THE DICKSON COUNTY  
10 SHERIFF'S OFFICE.

11 Q. HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

12 A. APPROXIMATELY 22 YEARS.

13 Q. AND HOW LONG HAVE YOU BEEN IN DICKSON COUNTY?

14 A. ABOUT 21 YEARS.

15 Q. NOW, YOU SAID YOU ARE CURRENTLY A DETECTIVE; IS  
16 THAT RIGHT?

17 A. THAT'S CORRECT.

18 Q. AS A DETECTIVE, WHAT KIND OF WORK ARE YOU TASKED  
19 WITH?

20 A. I WORK ALL SORTS OF CRIMES, EVERYTHING FROM  
21 SIMPLE VANDALISMS TO HOMICIDES. AND I HAVE BEEN ALSO WORKING  
22 WITH THE CYBERCRIME UNIT.

23 Q. IN YOUR WORK WITH THE CYBERCRIME UNIT, DO YOU  
24 WORK WITH DETECTIVE LEVASSEUR?

25 A. I DO.

1 Q. AND DO YOU SOMETIMES INVESTIGATE CYBERCRIMES  
2 INVOLVING INAPPROPRIATE IMAGES OF CHILDREN ON COMPUTERS?

3 A. YES, SIR.

4 Q. OKAY. NOW, WERE YOU DOING THAT KIND OF WORK ON  
5 MAY 18, 2009?

6 A. YES, SIR.

7 Q. YOU WERE WORKING WITH A CYBERCRIMES TASK FORCE?

8 A. YES, SIR; I WAS.

9 Q. OKAY. AND ON OR ABOUT MAY 18, DID YOU GO WITH  
10 DETECTIVE LEVASSEUR TO A RESIDENCE FOR PURPOSES EXECUTING A  
11 SEARCH WARRANT?

12 A. I DID.

13 Q. WHOSE RESIDENCE?

14 A. THE TUMMINS RESIDENCE.

15 Q. YOU WENT THERE TO EXECUTE A VALID SEARCH  
16 WARRANT?

17 A. YES, SIR.

18 Q. WHAT DID THE SEARCH WARRANT GENERALLY AUTHORIZE  
19 YOU TO SEARCH FOR?

20 A. COMPUTER-RELATED ITEMS.

21 Q. WAS THAT BASED ON AN INVESTIGATION THAT  
22 DETECTIVE LEVASSEUR HAD DONE INVOLVE SOMETHING INTERNET CHILD  
23 PORNOGRAPHY?

24 A. YES, SIR.

25 Q. WHEN YOU WENT TO THE RESIDENCE, WHERE WAS THAT

1 RESIDENCE LOCATED? JUST ROUGHLY?

2 A. IT'S IN THE CITY LIMITS OF DICKSON, I BELIEVE,  
3 IN DICKSON COUNTY, 46 SOUTH.

4 Q. DID YOU UNDERSTAND THAT TO BE THE HOME OF  
5 MR. TUMMINS, THE DEFENDANT IN THIS CASE?

6 A. YES, SIR; I DID.

7 Q. OKAY. AND YOU SAID YOU WENT THERE ON MAY 18TH  
8 OF 2009; IS THAT CORRECT?

9 A. YES, SIR.

10 Q. OKAY. ON THE NIGHT THAT -- ON THE DAY THAT YOU  
11 WENT TO EXECUTE THIS WARRANT, WHO WAS WITH YOU AND DETECTIVE  
12 LEVASSEUR?

13 A. JUST THE TWO OF US.

14 Q. OKAY. THERE WASN'T A TEAM OF AGENTS OR OFFICERS  
15 THERE TO EXECUTE THE WARRANT?

16 A. NO, SIR.

17 Q. JUST TWO DICKSON COUNTY SHERIFF'S DEPARTMENT  
18 DETECTIVES; IS THAT RIGHT?

19 A. THAT'S CORRECT.

20 Q. HOW WERE YOU DRESSED?

21 A. WE WERE IN CIVILIAN CLOTHES. I WAS PROBABLY  
22 WEARING BLUE JEANS AND MAYBE A POLO SHIRT.

23 Q. WERE YOU WEARING BODY ARMOR?

24 A. NO, SIR.

25 Q. WERE YOU WEARING A HELMET AND GOGGLES?



1 A. NO, SIR.

2 Q. WERE YOU CARRYING A HELMET, A SHOTGUN?

3 A. NO, SIR.

4 Q. WHAT WERE YOU CARRYING?

5 A. CARRYING GLOCK SIDEARMS.

6 Q. WHERE WAS THAT LOCATED DURING THE WHOLE  
7 INTERACTION WITH THE DEFENDANT ON THE 18TH?

8 A. THEY WERE HOLSTERED ON OUR HIPS.

9 Q. IS THAT PURSUANT TO REGULATIONS WHERE YOU ARE  
10 SUPPOSED TO CARRY THAT WEAPON?

11 A. YES, SIR.

12 Q. IN GETTING READY FOR TODAY'S HEARING, DID YOU  
13 REVIEW SOME ITEMS RELATED BACK TO THE EXECUTION OF THAT SEARCH  
14 WARRANT?

15 A. I DID.

16 Q. AND IS ONE OF THE ITEMS THAT YOU REVIEWED AN  
17 AUDIO RECORDING OF YOUR AND DETECTIVE LEVASSEUR'S DISCUSSIONS  
18 WITH MR. TUMMINS AND MR. TUMMINS' WIFE?

19 A. YES, SIR.

20 Q. DID YOU ALSO REVIEW A TRANSCRIPT OF THAT AUDIO  
21 RECORDING?

22 A. I DID.

23 Q. IS THE AUDIO RECORDING GENERALLY CONSISTENT WITH  
24 YOUR MEMORY OF WHAT TRANSPIRED MAY 18 OF 2009?

25 A. THE AUDIO RECORDING -- YES, SIR.

1 Q. IT'S GENERALLY CONSISTENT WITH WHAT HAPPENED  
2 DURING THE EXECUTION OF THAT WARRANT; IS THAT RIGHT?

3 A. YES, SIR.

4 Q. IS THE TRANSCRIPT GENERALLY CONSISTENT WITH THE  
5 AUDIO RECORDINGS AND WITH WHAT YOU REMEMBER HAPPENING DURING THE  
6 EXECUTION OF THE WARRANT?

7 A. GENERALLY.

8 Q. IT'S POSSIBLE THERE ARE SOME WORDS THAT ARE NOT  
9 EXACT -- EXACTLY AS THEY APPEAR ON THE DISK, BUT IT'S GENERALLY  
10 CONSISTENT; IS THAT FAIR TO SAY?

11 A. YES, SIR.

12 Q. ALL RIGHT. NOW, WHEN YOU WENT TO THE  
13 DEFENDANT'S RESIDENCE ON MAY 18, WHAT KIND OF VEHICLE WERE YOU  
14 IN?

15 A. WE WERE IN DETECTIVE LEVASSEUR'S UNMARKED PATROL  
16 CAR.

17 Q. WAS IT DAYTIME OR NIGHTTIME?

18 A. DAYTIME, IN THE EVENING.

19 Q. AT THAT TIME OF YEAR IT'S STILL LIGHT OUT  
20 RELATIVELY LATE IN THE DAY; IS THAT CORRECT?

21 A. YES.

22 Q. IN MAY?

23 A. YES, SIR.

24 Q. YOU WERE IN AN UNMARKED POLICE VEHICLE?

25 A. YES, SIR.

1 Q. DOES IT HAVE ANY LIGHTS OR EQUIPMENT ON THE ROOF  
2 OF THE CAR?  
3 A. NO, SIR.  
4 Q. DOES IT HAVE ONE OF THOSE BARS ON THE FRONT YOU  
5 CAN USE TO PUSH VEHICLES OUT OF THE ROAD?  
6 A. NO, SIR.  
7 Q. WHAT KIND IS IT? IS IT JUST A SEDAN?  
8 A. IT'S A CROWN VICTORIA FOUR-DOOR SEDAN; YES, SIR.  
9 Q. OKAY. AND WHEN YOU ARRIVED AT THE DEFENDANT'S  
10 RESIDENCE, DID YOU USE BLUE LIGHTS?  
11 A. NO, SIR.  
12 Q. TO ALERT PEOPLE OF YOUR PRESENCE?  
13 A. NO, SIR.  
14 Q. DID YOU ACTIVATE A SIREN?  
15 A. NO, SIR.  
16 Q. DID YOU USE A BULLHORN OR OTHER AMPLIFICATION  
17 DEVICE TO ANNOUNCE THAT POLICE WERE AT THE RESIDENCE TO EXECUTE  
18 A SEARCH WARRANT?  
19 A. NO, SIR.  
20 Q. NOW, HAVE YOU EVER SEEN THAT DONE DURING THE  
21 EXECUTION OF SEARCH WARRANTS?  
22 A. MANY TIMES.  
23 Q. OKAY. BUT YOU DIDN'T DO THAT THIS TIME; IS THAT  
24 RIGHT?  
25 A. THAT'S CORRECT.

1 Q. OKAY. HOW DID YOU AND DETECTIVE LEVASSEUR  
2 ENGAGE WITH THE PEOPLE IN THE DEFENDANT'S RESIDENCE ON THAT DAY?  
3 A. WE JUST WALKED UP TO FRONT DOOR AND MET THEM AT  
4 THE FRONT DOOR.  
5 Q. DID YOU KNOCK ON THE FRONT DOOR?  
6 A. I BELIEVE SO.  
7 Q. AND YOU WERE STILL IN YOUR PLAIN CLOTHES AT THAT  
8 POINT; IS THAT CORRECT?  
9 A. YES.  
10 Q. WHO ANSWERED THE DOOR, DETECTIVE PATTERSON?  
11 A. I BELIEVE BOTH MR. AND MRS. TUMMINS, I BELIEVE.  
12 Q. OKAY. AND AT SOME POINT DID ONE OR BOTH OF THEM  
13 INVITE YOU INTO THE HOUSE?  
14 A. YES, SIR.  
15 Q. OKAY. AND DID YOU AND DETECTIVE LEVASSEUR ENTER  
16 THE RESIDENCE?  
17 A. WE DID.  
18 Q. NOW, THIS WAS THE BEGINNING APPROXIMATELY OF AN  
19 INTERACTION BETWEEN YOU, DETECTIVE LEVASSEUR, AND MR. AND MRS.  
20 TUMMINS? IS THAT FAIR TO SAY?  
21 A. YES, SIR.  
22 Q. APPROXIMATELY HOW LONG DID THAT INTERACTION  
23 LAST?  
24 A. BY LOOKING AT THE TAPE, I BELIEVE IT WAS ABOUT  
25 TWO HOURS AND NINE MINUTES.

1 Q. OKAY. DID MOST, IF NOT ALL, OF THAT INTERACTION  
2 OCCUR WITHIN THE TUMMINS' HOME?

3 A. YES, SIR.

4 Q. OKAY. AT ANY TIME DID YOU PUT MR. TUMMINS IN  
5 THE BACK OF THE POLICE CRUISER? IN THE BACK OF THE POLICE CAR?

6 A. NO, SIR.

7 Q. DID YOU PUT HIM IN A VAN OR POLICE VEHICLE OR  
8 OTHERWISE TAKE HIM OUT OF THE HOUSE BY FORCE?

9 A. NO, SIR.

10 Q. SO THIS WHOLE INTERACTION HAPPENED WITHIN THE  
11 RESIDENCE; IS THAT CORRECT?

12 A. YES, SIR.

13 Q. OKAY. WHO WAS PRESENT DURING THIS APPROXIMATELY  
14 TWO HOUR INTERACTION BETWEEN YOU AND MR. TUMMINS AND DETECTIVE  
15 LEVASSEUR?

16 A. DETECTIVE LEVASSEUR, MYSELF, MR. TUMMINS AND  
17 MRS. TUMMINS.

18 Q. JUST THE FOUR OF YOU?

19 A. YES, SIR.

20 Q. THERE WAS NO OTHER TEAM OF AGENTS COMING AND  
21 GOING FROM THE HOUSE?

22 A. NO, SIR.

23 Q. OKAY. NOW, YOU SAID A MINUTE AGO THAT THIS  
24 INTERACTION TOOK ROUGHLY TWO HOURS. THAT'S BASED ON YOUR REVIEW  
25 OF THE RECORDING; IS THAT RIGHT?

1           A.       YES, SIR.

2           Q.       BUT THAT'S ALSO CONSISTENT WITH YOUR MEMORY; IS  
3 THAT ALSO CORRECT?

4           A.       YES, SIR.

5           Q.       WHY DID IT TAKE TWO HOURS TO GET IN AND OUT OF  
6 THE HOUSE?

7           A.       IF MEMORY SERVES CORRECT, WE COLLECTED A LOT OF  
8 EVIDENCE FROM THE RESIDENCE. DETECTIVE LEVASSEUR ALSO DID A  
9 FORENSIC PREVIEW OF ONE OF THE COMPUTERS, I BELIEVE. PLUS,  
10 MR. AND MRS. TUMMINS HAD A LOT OF QUESTIONS FOR US. WE STAYED  
11 THERE UNTIL A LOT OF THE QUESTIONS WERE ANSWERED.

12          Q.       OKAY. AND SO PART OF THE REASON WHY YOU WERE IN  
13 THE HOUSE IS YOU WERE ANSWERING QUESTIONS THAT MR. AND MRS.  
14 TUMMINS ASKED OF YOU?

15          A.       YES, SIR.

16          Q.       AND IS THAT GENERALLY REFLECTED ON THE RECORDING  
17 AND IN THE TRANSCRIPT?

18          A.       YES, SIR.

19          Q.       OKAY. IS IT YOUR VIEW THAT YOU WOULD HAVE BEEN  
20 OUT OF THERE MORE QUICKLY IF YOU HADN'T STAYED TO ANSWER  
21 QUESTIONS?

22          A.       OH, YES, SIR.

23          Q.       NOW, DURING THIS FORENSIC PREVIEW, DETECTIVE  
24 LEVASSEUR HAD TO DO SOME WORK ON THE COMPUTERS; IS THAT RIGHT?

25          A.       YES, SIR.

1 Q. AND DID HE HAVE TO TAKE THE COMPUTER APART AND  
2 LOOK AT IT AND EXAMINE IT, THINGS OF THAT NATURE?

3 A. YES, SIR. HE TOOK A HARD DRIVE OUT OF ONE  
4 COMPUTER.

5 Q. OKAY. YOU ALSO SAID YOU COLLECTED A LOT OF  
6 EVIDENCE. WHAT DO YOU ALL HAVE TO DO WHEN YOU COLLECT EVIDENCE  
7 DURING THE SEARCH WARRANT EXECUTION?

8 A. WE HAVE TO FILL OUT AN INVENTORY OR A CHAIN OF  
9 CUSTODY FORM. AND WHAT THAT ENTAILS IS LABELING THE ITEM, AS IT  
10 WAS FOUND, NUMBER ONE BEING THE FIRST ITEM FOUND. WE HAVE TO  
11 DOCUMENT THE ITEM. IF IT'S A COMPUTER, WE WILL LIST THE MAKE,  
12 MODEL AND SERIAL NUMBER. WE ALSO HAVE TO INDICATE WHERE IT WAS  
13 FOUND AND WHO LOCATED IT.

14 Q. OKAY. AND THAT TAKES TIME AS WELL, DOESN'T IT?

15 A. YES, SIR. WE FILL THAT OUT BY HAND.

16 Q. OKAY. DURING YOUR TIME IN THE TUMMINS  
17 RESIDENCE, DID YOU AND DETECTIVE LEVASSEUR VERBALLY ENGAGE  
18 MR. AND MRS. TUMMINS?

19 A. YES, SIR.

20 Q. WAS THERE A VERBAL EXCHANGE OF WORDS BETWEEN YOU  
21 AND THE TUMMINSES?

22 A. YES, SIR.

23 Q. DURING THAT DIALOGUE, DID YOU DISPLAY YOUR  
24 HANDCUFFS?

25 A. NO, SIR.

1 Q. DID YOU TELL ANYONE YOU WERE GOING TO PUT THEM  
2 IN HANDCUFFS?

3 A. NO, SIR.

4 Q. DID YOU DISPLAY A WEAPON?

5 A. MY WEAPON WAS VISIBLE, BUT I DIDN'T EVER -- I  
6 NEVER UNHOLSTERED IT.

7 Q. YOU NEVER UNHOLSTERED YOUR WEAPON?

8 A. NO, SIR.

9 Q. WAS THERE ANY EFFORT TO SURROUND MR. TUMMINS  
10 PHYSICALLY WITH THE BODIES OF YOU AND DETECTIVE LEVASSEUR?

11 A. NO, SIR.

12 Q. DID ANYBODY GET UP IN MR. TUMMINS' FACE, CLOSE  
13 UP IN HIS FACE, TO ASK HIM QUESTIONS?

14 A. NO, SIR.

15 Q. APPROXIMATELY HOW FAR AWAY WERE YOU AND  
16 DETECTIVE LEVASSEUR PHYSICALLY FROM MR. AND MRS. TUMMINS DURING  
17 THIS INTERACTION?

18 A. WELL, INITIALLY IT STARTED UPSTAIRS IN THE BONUS  
19 ROOM. AND DETECTIVE LEVASSEUR WAS AT A COMPUTER, AND I WAS  
20 SITTING BEHIND DETECTIVE LEVASSEUR, MAYBE FIVE OR SIX FEET. AND  
21 THEN MRS. TUMMINS WAS NEXT TO ME. AND THEN MR. TUMMINS, I  
22 BELIEVE, WAS ON ANOTHER CHAIR. SO IT PROBABLY OCCURRED WITHIN,  
23 I WOULD SAY, 15 FEET MAYBE, TOTAL.

24 Q. THAT'S AN ESTIMATE?

25 A. THAT'S AN ESTIMATE.



1 Q. AND DO I UNDERSTAND YOU TO SAY THAT DURING THIS  
2 BONUS ROOM INTERACTION -- AND IS THE BONUS ROOM WHERE THE  
3 COMPUTERS WERE LOCATED, OR ONE OF THE COMPUTERS WAS LOCATED?

4 A. ONE OF THEM WAS; YES, SIR.

5 Q. OKAY. DURING THIS BONUS ROOM INTERACTION, WAS  
6 MRS. TUMMINS BETWEEN YOU AND DETECTIVE LEVASSEUR AND MR.  
7 TUMMINS?

8 A. YES, SIR.

9 Q. AND WOULD YOU DESCRIBE THE DISTANCES BETWEEN  
10 YOUR PERSONS AS CONVERSATION DISTANCES, DISTANCES THAT YOU MIGHT  
11 BE AWAY FROM SOMEBODY, SAY, SITTING AROUND COFFEE TABLE HAVING A  
12 CONVERSATION?

13 A. PROBABLY A LITTLE BIT MORE THAN THAT, BUT  
14 ROUGHLY, YES, SIR.

15 Q. OKAY. NOW, DURING THIS, I THINK YOU SAID A  
16 MINUTE AGO THAT THERE WAS A VERBAL EXCHANGE. THERE WERE  
17 QUESTIONS ASKED AND ANSWERED BY BOTH YOU AND DETECTIVE  
18 LEVASSEUR, AS WELL AS MR. AND MRS. TUMMINS; IS THAT CORRECT?

19 A. YES, SIR.

20 Q. AND BASED ON YOUR REVIEW OF THE TAPE, YOUR  
21 REVIEW OF THE TRANSCRIPT AND YOUR OWN RECOLLECTION, DO YOU  
22 REMEMBER WHO ASKED QUESTIONS DURING THIS EXCHANGE?

23 A. I BELIEVE EVERYBODY ASKED QUESTIONS.

24 Q. OKAY. AND THAT WOULD INCLUDE YOU?

25 A. YES, SIR.

1 Q. THAT WOULD INCLUDE DETECTIVE LEVASSEUR?

2 A. YES, SIR.

3 Q. THAT WOULD INCLUDE MR. TUMMINS?

4 A. YES, SIR.

5 Q. AND THAT WOULD INCLUDE MRS. TUMMINS; IS THAT  
6 FAIR TO SAY?

7 A. YES, SIR.

8 Q. OKAY. WHAT WAS THE TONE -- WHAT WAS THE GENERAL  
9 TONE OF THE QUESTIONS THAT YOU AND DETECTIVE LEVASSEUR ASKED OF  
10 MR. TUMMINS AND MRS. TUMMINS WHEN YOU WERE INTERACTING WITH  
11 THEM?

12 A. IT WAS BASICALLY, YOU KNOW, TRYING TO DETERMINE,  
13 YOU KNOW, WHO HAD ACCESS TO THE COMPUTERS AND THINGS LIKE THAT.

14 Q. OKAY. NOW, AT SOME POINT -- YOU HAVE KNOWN  
15 DETECTIVE LEVASSEUR FOR A WHILE; IS THAT RIGHT?

16 A. YES, SIR; I HAVE.

17 Q. AT SOME POINT, DID DETECTIVE LEVASSEUR'S TONE  
18 GET A LITTLE BIT MORE AGGRESSIVE IN THE QUESTIONING? WAS THERE  
19 A CHANGE IN HIS TONE?

20 A. THERE WAS AT ONE POINT; YES, SIR.

21 Q. OKAY. DO YOU KNOW WHY THAT HAPPENED?

22 A. YES, SIR.

23 MR. POTTER: OBJECT, YOUR HONOR. SPECULATION.

24 THE COURT: WELL, WHAT DID YOU OBSERVE AT THE TIME HE  
25 BECAME AGGRESSIVE?

1 THE WITNESS: I JUST OBSERVED THE WAY THAT HE WAS  
2 TALKING, HIS MANNERISMS AND HIS VOICE GETTING LOUDER.

3 MR. EVERETT: YOUR HONOR, I WILL TRY IT A DIFFERENT  
4 WAY.

5 BY MR. EVERETT:

6 Q. DURING THE INTERVIEW WITH MR. AND MRS. TUMMINS,  
7 DID YOU LEARN THAT MR. TUMMINS WAS A SCHOOLTEACHER?

8 A. I DID.

9 Q. BY VIRTUE OF THAT, DID YOU CONCLUDE THAT HE WAS  
10 IN CLOSE PROXIMITY TO SCHOOL-AGE CHILDREN?

11 A. YES, SIR.

12 Q. DID YOU ALSO DETERMINE DURING THAT CONVERSATION  
13 THAT THERE WERE IMAGES OF SCHOOL-AGE CHILDREN ON THE COMPUTER  
14 THAT -- ON ONE OR MORE OF THE COMPUTERS THAT YOU WERE THERE TO  
15 COLLECT?

16 A. YES, SIR.

17 Q. NOW, YOU SAID THAT YOU WORK ON THE TASK FORCE;  
18 IS THAT CORRECT?

19 A. THAT'S CORRECT.

20 Q. AND YOU SAID THAT YOU INVESTIGATE INTERNET  
21 CRIMES AGAINST CHILDREN; IS THAT CORRECT?

22 A. YES, SIR.

23 Q. AND IN THE CONTEXT OF INVESTIGATING THOSE  
24 CRIMES, DO YOU HAVE EXPERIENCE WITH BOTH INTERNET CRIMES AGAINST  
25 CHILDREN AND ALSO HANDS-ON OFFENSES AGAINST CHILDREN?

1           A.       I DO.

2           Q.       IN YOUR EXPERIENCE, IS THERE SOMETIMES A  
3 CONNECTION BETWEEN INTERNET CRIMES AGAINST CHILDREN AND HANDS-ON  
4 CRIMES AGAINST CHILDREN?

5           A.       SOMETIMES THERE IS; YES, SIR.

6           Q.       AND IN INVESTIGATING INTERNET CRIMES AGAINST  
7 CHILDREN, WHEN YOU DETERMINE THAT SOMEONE HAS CLOSE PROXIMITY OR  
8 CONTACT WITH CHILDREN, DO YOU TAKE CERTAIN STEPS?

9           A.       TO MAKE SURE THERE'S NO HANDS-ON CONTACT? YES,  
10 SIR; WE DO. SURE.

11          Q.       OKAY. AND DO YOU TAKE STEPS TO MAKE SURE THAT  
12 IF THERE IS A HANDS-ON PROBLEM, THAT IT STOPS AS SOON AS  
13 POSSIBLE?

14          A.       YES, SIR.

15          Q.       WHY DO YOU TAKE THOSE STEPS?

16          A.       THAT'S FOR THE SAFETY OF THE CHILDREN.

17          Q.       OKAY. NOW, AT SOME POINT, IT CAME TIME FOR YOU  
18 AND DETECTIVE LEVASSEUR TO COLLECT WHAT YOU CAME FOR AND LEAVE;  
19 IS THAT CORRECT?

20          A.       YES, SIR.

21          Q.       DID DETECTIVE LEVASSEUR SAY OR DO ANYTHING TO  
22 ACCOMMODATE MR. AND MRS. TUMMINS WITH RESPECT TO THE COMPUTERS  
23 THAT HAD TO LEAVE THE RESIDENCE?

24          A.       YES, SIR.

25          Q.       OKAY. AND CAN YOU PLEASE TELL US WHAT THAT WAS?

1           A.       I REMEMBER THAT MR. TUMMINS SAID THAT HE DID  
2       SOME PHOTOGRAPHY, AND I BELIEVE HE HAD SOME PHOTOGRAPHS ON THE  
3       COMPUTER. AND HE ASKED IF HE COULD GET THOSE BACK. AND I  
4       REMEMBER DETECTIVE LEVASSEUR SAID, WELL, IF IT CONTAINS  
5       CONTRABAND, YOU CAN'T, BUT IF IT DOES, THEN I WILL DOWNLOAD THE  
6       PHOTOGRAPHS AND GET THOSE TO YOU. AND I BELIEVE MRS. TUMMINS  
7       SAID SOMETHING ABOUT USING HERS FOR SCHOOL MAYBE. SO DETECTIVE  
8       LEVASSEUR SAID HE WOULD GO AHEAD AND LOOK AT THAT ONE FIRST, AND  
9       IF IT WAS OKAY, HE WOULD GO AHEAD AND RETURN THAT. AND I ALSO  
10      BELIEVE HE SAID THE SAME THING ABOUT AN IPHONE, MAYBE.

11           Q.       NOW, WHEN YOU WERE EXECUTING ONE OF THESE  
12      WARRANTS FOR ELECTRONIC MEDIA, LIKE A COMPUTER, DO YOU HAVE TO  
13      DO WHAT DETECTIVE LEVASSEUR OFFERED TO DO?

14           A.       TO LIKE DOWNLOAD PHOTOGRAPHS FOR THEM? NO, SIR.

15           Q.       DO YOU HAVE TO MAKE AN EFFORT TO REVIEW THE  
16      ITEMS IN AN ORDER THAT WOULD BE MOST CONVENIENT FOR THE  
17      DEFENDANT?

18           A.       NO, SIR.

19           Q.       DO YOU HAVE TO LOOK AT THE IPHONE OR THE SCHOOL  
20      COMPUTER FIRST SO THE DEFENDANT OR HIS WIFE CAN HAVE THAT BACK  
21      AND CONTINUE ON WITH THEIR LIFE?

22           A.       WE DON'T HAVE TO; NO, SIR.

23           Q.       OKAY. SO WAS THIS AN ACCOMMODATION THAT  
24      DETECTIVE LEVASSEUR OFFERED TO MAKE?

25           A.       I BELIEVE SO.

1 Q. OKAY. NOW, DURING YOUR INTERACTION WITH THE  
2 DEFENDANT, DID YOU ALSO DISCUSS, OR DID DETECTIVE LEVASSEUR  
3 DISCUSS, WITH THE DEFENDANT AND MRS. TUMMINS THE DISTRICT  
4 ATTORNEY?

5 A. YES, SIR.

6 Q. OKAY. AND WHAT'S YOUR GENERAL RECOLLECTION  
7 ABOUT WHAT THAT PIECE OF THE CONVERSATION WAS ABOUT?

8 A. I BELIEVE MR. TUMMINS WAS TALKING ABOUT HE  
9 WANTED SOMEBODY TO HEAR HIS SIDE, OR -- AND UNDERSTAND HIS  
10 MOTIVATION. AND DETECTIVE LEVASSEUR TOLD HIM THAT HE COULD TALK  
11 TO THE DISTRICT ATTORNEY BEFORE CHARGES WERE FILED.

12 Q. OKAY. AND BEAR WITH ME FOR JUST A MINUTE.  
13 DURING THE DISCUSSION REGARDING THE DISTRICT ATTORNEY, DO YOU  
14 RECALL THE DEFENDANT, MR. TUMMINS, USING WORDS TO THIS EFFECT:  
15 WOULD -- WILL -- WILL THEY JUST NOT UNDERSTAND 'CAUSE  
16 WE WON'T HAVE A CONVERSATION LIKE WE'VE HAD HERE?

17 A. YES, SIR.

18 Q. NOW, THAT MAY NOT BE AN EXACT QUOTE, BUT DID HE  
19 SAY SOMETHING TO THAT EFFECT?

20 A. WORDS TO THAT EFFECT; YES, SIR.

21 Q. OKAY. AND THAT HAD TO DO WITH GOING IN AND  
22 TALKING TO THE D.A. WHEN CHARGES WERE FILED?

23 A. YES, SIR. THAT'S WHAT WE WERE TALKING ABOUT AT  
24 THAT TIME.

25 Q. NOW, AS A POLICE OFFICER, ARE YOU AWARE OF AN

1 OBLIGATION TO ALLOW SUBJECTS OF A SEARCH WARRANT OR SUBJECTS OF  
2 AN INVESTIGATION TO TALK TO A D.A. BEFORE CHARGES ARE FILED?

3 A. I'M NOT AWARE OF AN OBLIGATION; NO, SIR.

4 Q. OKAY. HAVE YOU BEEN INVOLVED IN CASES BEFORE  
5 WHERE THE DEFENDANT DIDN'T GET A CHANCE TO TALK TO THE D.A.  
6 BEFORE CHARGES WERE FILED?

7 A. YES, SIR.

8 Q. OKAY. IS THIS ANOTHER EXAMPLE OF AN  
9 ACCOMMODATION THAT YOU AND DETECTIVE LEVASSEUR MADE THAT DAY?

10 A. I WOULD SAY SO; YES, SIR.

11 Q. DURING YOUR INTERACTION WITH MR. AND MRS.  
12 TUMMINS, DID YOU DO ANYTHING, OR DID DETECTIVE LEVASSEUR -- DID  
13 YOU SEE DETECTIVE LEVASSEUR DO ANYTHING TO PHYSICALLY RESTRICT  
14 MR. TUMMINS' OR MRS. TUMMINS' FREEDOM OF MOVEMENT IN THEIR HOME?

15 A. THE ONLY THING I SAW IS ONE -- WELL, MAYBE MORE  
16 THAN ONCE, MAYBE TWO OR THREE TIMES, MR. TUMMINS REACHED FOR HIS  
17 COMPUTER, AND DETECTIVE LEVASSEUR TOLD HIM NOT TO TOUCH THE  
18 COMPUTER. BUT OTHER THAN THAT, NO, SIR.

19 Q. OKAY. YOU DIDN'T SAY, SIT ON THE COUCH AND STAY  
20 THERE?

21 A. NO, SIR.

22 Q. DID YOU HEAR DETECTIVE LEVASSEUR DO OR SAY  
23 ANYTHING LIKE THAT?

24 A. NO, SIR; I DIDN'T.

25 Q. DID YOU HEAR OR SEE ANYBODY -- DID YOU HEAR

1 DETECTIVE LEVASSEUR OR DID YOU TELL ANYBODY, DON'T GO IN THE  
2 ROOM WITH THE COMPUTERS, OR DON'T LEAVE THE ROOM WITH THE  
3 COMPUTERS? WAS THERE ANY KIND OF COMMENT LIKE THAT MADE THAT  
4 YOU CAN RECALL?

5 A. NO, SIR.

6 Q. NOW, BASED ON YOUR RECOLLECTION OF THAT  
7 INTERACTION, THE PHYSICAL ASPECT OF IT, WERE PEOPLE MOVING  
8 AROUND THE HOME WHILE YOU WERE IN THE RESIDENCE?

9 A. WE ALL WERE; YES, SIR.

10 Q. OKAY. EXPLAIN THAT TO ME, PLEASE, DETECTIVE  
11 PATTERSON.

12 A. YES, SIR. DETECTIVE LEVASSEUR LEFT SEVERAL  
13 TIMES TO TAKE ITEMS OUT TO THE CAR. ME AND MRS. TUMMINS WENT  
14 DOWNSTAIRS AT ONE TIME, BECAUSE IT WAS EXTREMELY HOT UPSTAIRS IN  
15 THE BONUS ROOM, IF I REMEMBER CORRECTLY. AND I BELIEVE MR.  
16 TUMMINS WAS UP THERE ALONE. AND THEN DETECTIVE LEVASSEUR AND  
17 MR. TUMMINS CAME DOWN. SO THERE WAS A LOT OF ACTION,  
18 INTERACTION AND MOVING AROUND.

19 Q. OKAY. SO AS BEST YOU CAN RECALL, THERE WAS AT  
20 LEAST ONE POINT WHERE MR. TUMMINS WAS LEFT UNATTENDED IN THE  
21 HOUSE?

22 A. YES, SIR.

23 Q. HE WASN'T IN THE COMPANY OF ANY POLICE OFFICER?

24 A. YES, SIR.

25 Q. IS THAT YOUR TESTIMONY?



1           A.       YES, SIR.

2           Q.       OKAY.  NOW, IS THAT -- DO YOU DO THAT EVERY TIME  
3           YOU EXECUTE A SEARCH WARRANT?  IS THAT COMMON OR UNCOMMON TO  
4           JUST LEAVE SOMEBODY ALONE WHEN YOU ARE EXECUTING A WARRANT?

5           A.       IT REALLY DEPENDS ON THE WARRANT -- A WARRANT.  
6           WE'VE DONE IT BEFORE, BUT WE DON'T ALWAYS DO IT.

7           Q.       OKAY.  SO WAS THERE SOMETHING ABOUT THE NATURE  
8           OF THIS SEARCH WARRANT AND YOUR INTERACTION WITH THE TUMMINSES  
9           THAT MADE YOU THINK THAT THAT WAS OKAY?

10          A.       YES, SIR.  IT WAS LOW KEY, THEY WERE  
11          COOPERATIVE, IT WAS NOT A HOSTILE ENVIRONMENT.

12          Q.       OKAY.  WOULD YOU HAVE DONE THAT IF YOU WERE  
13          EXECUTING A WARRANT FOR NARCOTICS?

14          A.       NO, SIR.

15          Q.       WOULD YOU HAVE DONE THAT IF YOU WERE EXECUTING A  
16          WARRANT FOR FIREARMS OR EXPLOSIVES?

17          A.       DEFINITELY NOT; NO, SIR.

18          Q.       NOW, WHEN MR. TUMMINS WAS LEFT ALONE IN THAT  
19          ROOM OR AT ANY TIME DURING THE INTERACTION, WAS HE EVER PUT IN A  
20          ROOM, AND WAS THE DOOR LOCKED OR BARRED BY AN OFFICER?

21          A.       NO, SIR.  I DON'T BELIEVE A DOOR WAS EVER  
22          CLOSED, EXCEPT FOR THE FRONT DOOR.

23          Q.       AT ANY TIME DID YOU OR DETECTIVE LEVASSEUR, THAT  
24          YOU SAW, MAKE AN EFFORT TO PHYSICALLY CUT OFF MR. TUMMINS FROM  
25          MRS. TUMMINS?

1 A. NO, SIR.

2 Q. YOU DIDN'T GET BETWEEN THEM?

3 A. NO.

4 Q. YOU DIDN'T MAKE MRS. TUMMINS LEAVE THE ROOM?

5 MR. POTTER: OBJECT TO THE LEADING, YOUR HONOR.

6 THE COURT: RESTATE YOUR QUESTION.

7 MR. EVERETT: I'M SORRY, YOUR HONOR?

8 THE COURT: RESTATE YOUR QUESTION.

9 BY MR. EVERETT:

10 Q. DID YOU OR DETECTIVE LEVASSEUR PHYSICALLY

11 SEPARATE MRS. TUMMINS FROM MR. TUMMINS?

12 A. NO, SIR.

13 Q. NOW, DURING THIS INTERACTION WITH MR. TUMMINS,

14 DID ANYBODY SAY ANYTHING ABOUT ANYONE BEING UNDER ARREST?

15 A. NO, SIR.

16 Q. DID YOU OR DETECTIVE LEVASSEUR AFFIRMATIVELY

17 TELL THE DEFENDANT HE WAS NOT UNDER ARREST?

18 A. DETECTIVE LEVASSEUR DID.

19 Q. DID THAT HAPPEN MORE THAN ONCE?

20 A. I'M SURE AT LEAST ONCE, AND POSSIBLY MORE.

21 Q. DID YOU EXPLAIN THE PURPOSE FOR YOUR VISIT TO

22 THE TUMMINS HOME?

23 A. DETECTIVE LEVASSEUR DID; YES, SIR.

24 Q. DO YOU RECALL WHAT HE SAID?

25 A. YES, SIR. HE SAID WE WERE THERE TO EXECUTE A

1 SEARCH WARRANT ON THE COMPUTERS.

2 Q. DURING THIS INTERACTION, DO YOU RECALL WHETHER  
3 OR NOT ANYONE TOLD THE DEFENDANT HE DIDN'T HAVE TO ANSWER  
4 QUESTIONS?

5 A. YES, SIR.

6 Q. WHO SAID THAT?

7 A. DETECTIVE LEVASSEUR DID.

8 Q. NOW, AT THE END OF YOUR INTERACTION WITH THE  
9 TUMMINSES, WAS THERE A PHYSICAL INTERACTION BETWEEN DETECTIVE  
10 LEVASSEUR AND MRS. TUMMINS? WAS THERE ANY CONTACT INTERACTION  
11 BETWEEN THOSE TWO?

12 A. AT THE VERY END; YES, SIR.

13 Q. CAN YOU PLEASE TELL US ABOUT THAT?

14 A. MR. TUMMINS WAS UPSET. I REMEMBER DETECTIVE  
15 LEVASSEUR ASKED HIM SOMETHING LIKE, YOU ARE NOT GOING TO DO  
16 ANYTHING STUPID, ARE YOU? AND MR. TUMMINS SAID, NO. WHEN WE  
17 WERE GETTING READY TO LEAVE, DETECTIVE LEVASSEUR LOOKED AT MRS.  
18 TUMMINS AND SAID, WATCH HIM. HE MOUTHED, WATCH HIM. BUT THAT  
19 WAS IT.

20 MR. EVERETT: MAY I HAVE JUST A MINUTE, YOUR HONOR?

21 THE COURT: I'M SORRY, I WANT TO MAKE SURE I  
22 UNDERSTAND. THE LAST STATEMENT WAS, THE DEFENDANT'S WIFE SAID  
23 WHAT?

24 THE WITNESS: HE MOUTHED -- OR, NO, SIR, NOT THE WIFE,  
25 BUT DETECTIVE LEVASSEUR MOUTHED TO MS. TUMMINS, WATCH HIM. HE

1 DIDN'T ACTUALLY SAY IT, BUT I COULD SEE, WATCH HIM, WITH HIS  
2 LIPS.

3 BY MR. EVERETT:

4 Q. IN YOUR MIND, WAS THAT LINKED UP TO THE "DON'T  
5 DO ANYTHING STUPID" COMMENT?

6 A. THAT'S WHAT TOOK IT AS.

7 MR. EVERETT: JUST A MINUTE, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MR. EVERETT: YOUR HONOR, I WILL TENDER THE WITNESS.

10 THANK YOU, SIR.

11 THE COURT: YOU MAY CROSS EXAMINE.

12 CROSS EXAMINATION

13 BY MR. POTTER:

14 Q. DETECTIVE PATTERSON, GOOD AFTERNOON.

15 A. GOOD AFTERNOON, MR. POTTER.

16 Q. I BELIEVE YOU KNOW ME. I REPRESENT, OBVIOUSLY,  
17 MR. TUMMINS.

18 A. YES, SIR.

19 Q. LET ME ASK YOU A FEW FOLLOW-UP QUESTIONS IN  
20 CROSS. AT THE TIME THAT YOU AND OFFICER PATTERSON -- OFFICER  
21 LEVASSEUR, EXCUSE ME, WENT TO THE TUMMINS' HOME, YOU KNEW THAT  
22 YOU WERE INVESTIGATING A POSSIBLE CHILD PORNOGRAPHY CASE; IS  
23 THAT RIGHT?

24 A. I DID.

25 Q. YOU ALSO KNEW AT THAT TIME, WHEN YOU ENTERED THE

1 HOME, THAT THE POTENTIAL SUSPECT WAS JEREMY SETH TUMMINS; IS  
2 THAT RIGHT?

3 A. WELL, NO, SIR, NOT REALLY. WE HAD AN IDEA -- I  
4 MEAN, THERE WAS ONLY TWO PEOPLE LIVING IN THE RESIDENCE. SO  
5 THERE WERE OTHER EXPLANATIONS. THAT'S WHY WE DIDN'T REALLY GO  
6 IN FORCEFULLY AT THE BEGINNING, IF THAT MAKES ANY SENSE.

7 Q. WHAT INVESTIGATION, IF ANY, HAD YOU DONE ABOUT  
8 WHO RESIDED AT THE HOME BEFORE YOU WENT TO THE HOME?

9 A. WE USED SEVERAL POLICE RESOURCES, THE LOCAL  
10 SHERIFF'S OFFICE RMS, WHICH IS A DATABASE OF CALLS AND STUFF.  
11 WE RAN DRIVER'S LICENSE AND CHECKED REGISTRATION. AND MR.  
12 POTTER, USUALLY I CALL THE ELECTRIC SERVICE. I PROBABLE DID  
13 THAT ON THAT CASE AS WELL.

14 Q. YOU CHECKED HIS EMPLOYMENT?

15 A. NO, SIR.

16 Q. YOU DIDN'T KNOW WHERE HE WORKED WHEN YOU WENT TO  
17 THE HOUSE?

18 A. I DON'T REMEMBER. I DON'T BELIEVE I DID WHEN WE  
19 WENT TO THE HOUSE.

20 Q. DID MR. LEVASSEUR EXPRESS TO YOU THAT HE KNEW  
21 WHERE MR. TUMMINS WORKED?

22 A. I DON'T REMEMBER. I KNOW WE TALKED ABOUT IT  
23 THERE, BUT I DON'T REMEMBER WE KNEW BEFORE WE GOT THERE OR NOT.

24 Q. WHEN YOU ENTERED THE HOME, WHAT TIME OF DAY WAS  
25 IT?

1           A.       I DON'T REMEMBER THE EXACT TIME. IT WAS IN THE  
2 EVENING.

3           Q.       EVENING TIME?

4           A.       YES, SIR.

5           Q.       YOU ARRIVED AT THE HOME. YOU BOTH ENTERED THE  
6 HOME, WENT INTO HIS HOME; IS THAT RIGHT?

7           A.       YES, SIR; WE DID.

8           Q.       AND IN THE HOME, WERE YOU PRESENT THE ENTIRE  
9 TIME WHEN OFFICER LEVASSEUR WAS QUESTIONING OR TALKING TO  
10 MR. TUMMINS?

11          A.       I WAS IN THE RESIDENCE, BUT I WAS NOT WITH THEM;  
12 NO, SIR.

13          Q.       YOU WEREN'T IN THE ROOM WITH OFFICER LEVASSEUR  
14 THE ENTIRE TIME?

15          A.       NO, SIR; I WAS NOT.

16          Q.       ON OCCASION, OFFICER LEVASSEUR WOULD BE WITH  
17 MR. TUMMINS, THE DEFENDANT IN THIS CASE, AND YOU WOULD BE IN A  
18 DIFFERENT PART OF THE HOUSE WITH MRS. TUMMINS; IS THAT RIGHT?

19          A.       THAT'S CORRECT; YES, SIR.

20          Q.       AND ON OCCASION, ALL FOUR OF YOU WOULD BE  
21 TOGETHER; IS THAT RIGHT?

22          A.       YES, SIR.

23          Q.       NOT LONG AFTER YOU AND MRS. TUMMINS WENT INTO  
24 THE HOME, YOU AND MRS. TUMMINS WENT INTO A SEPARATE AREA OF THE  
25 HOME; IS THAT RIGHT?

1           A.       YES, SIR.

2           Q.       AND SO MUCH OF THE EXCHANGE THAT YOU HAVE HEARD  
3 ON THIS AUDIOTAPE WOULD HAVE BEEN AN EXCHANGE THAT YOU HAVE  
4 HEARD FOR THE FIRST TIME; IS THAT RIGHT?

5           A.       ON THE AUDIOTAPE; YES, SIR.

6           Q.       AND THAT PRIMARILY WOULD BE THE EXCHANGE BETWEEN  
7 OFFICER LEVASSEUR AND MR. TUMMINS?

8           A.       THAT'S CORRECT; YES, SIR.

9           Q.       AT SOME POINT IN TIME, WHILE YOU WERE IN THIS  
10 HOME, NO DOUBT, MR. TUMMINS BECAME YOUR CHIEF SUSPECT; IS THAT  
11 CORRECT?

12          A.       YES, SIR.

13          Q.       HE BECAME THE CHIEF SUSPECT AFTER IT WAS  
14 DETERMINED THAT THERE WAS NO WIRELESS INTERNET CONNECTION; IS  
15 THAT RIGHT?

16          A.       WELL, AT THAT POINT WE NARROWED IT DOWN  
17 SPECIFICALLY TO THE TWO OF THEM, YES, SIR. OUR LIST OF SUSPECTS  
18 BEGAN TO SHRINK.

19          Q.       AND YOUR FOCUS OF YOUR INVESTIGATION WAS NOT  
20 MRS. LAURA TUMMINS?

21          A.       THAT'S CORRECT.

22          Q.       SO THAT LEAVES MR. JEREMY SETH TUMMINS; CORRECT?

23          A.       YES, SIR.

24          Q.       NOW, DURING THE TIME THAT YOU WERE IN THE HOME,  
25 MR. TUMMINS WAS BEING QUESTIONED REPEATEDLY ABOUT WHY CERTAIN

1 IMAGES WERE FOUND ON HIS COMPUTER; IS THAT RIGHT?

2 A. HE WAS; YES, SIR.

3 Q. AND THE PURPOSE OF THAT QUESTIONING WOULD HAVE  
4 BEEN TO GATHER EVIDENCE; RIGHT?

5 A. YES, SIR.

6 Q. REPEATEDLY, OFFICER LEVASSEUR QUESTIONED  
7 MR. TUMMINS ABOUT WHY CHILD PORNOGRAPHY WAS FOUND ON HIS  
8 COMPUTER; IS THAT RIGHT?

9 A. YES, SIR.

10 Q. REPEATEDLY, OFFICER LEVASSEUR QUESTIONED  
11 MR. TUMMINS ABOUT WHETHER OR NOT HE WAS AN PEDOPHILE; IS THAT  
12 TRUE?

13 A. SEVERAL TIMES -- I WOULDN'T SAY REPEATEDLY, BUT  
14 I BELIEVE AT LEAST ONE OCCASION, AND MAYBE TWO THAT I CAN  
15 RECALL. BUT YES, SIR, HE DID.

16 Q. YOU DO RECALL OFFICER LEVASSEUR MORE THAN ONCE  
17 TELLING MR. TUMMINS THAT HE IS GOING TO HAVE TO PROVIDE HIM WITH  
18 A SATISFACTORY EXPLANATION ABOUT WHY HE IS NOT A PEDOPHILE?

19 A. YES, SIR.

20 Q. YOU REMEMBER REPEATEDLY OFFICER LEVASSEUR  
21 TELLING MR. TUMMINS THAT THE IMAGES THAT WERE FOUND ON HIS  
22 COMPUTER WERE IMAGES THAT WOULD LEAD HIM TO BELIEVE THAT HE MAY  
23 HAVE PERP'D ON KIDS.

24 Q. NO, SIR. I DON'T REMEMBER HIM EVER SAYING THAT  
25 HE BELIEVED HE PERP'D ON KIDS.



1 Q. ASKED HIM FOR EXPLANATION WHY HE HAS NOT PERP'D  
2 ON KIDS.

3 THE COURT: WHY HE HAS NOT WHAT?

4 MR. POTTER: PERP'D. PERPETRATE, IS WHAT I'M TRYING TO  
5 ASK.

6 BY MR. POTTER:

7 Q. BUT THAT'S THE WORD THAT OFFICER LEVASSEUR WAS  
8 USING, PERP; IS THAT RIGHT?

9 A. PERP; YES, SIR.

10 Q. PERP MEANING PERPETRATE?

11 A. PERPETRATED; YES, SIR.

12 Q. AND REPEATEDLY ASKED MR. TUMMINS, LOOK, YOU'RE  
13 GOING TO HAVE TO PROVIDE ME WITH SOME EXPLANATION THAT'S GOING  
14 TO CONVINCE ME THAT YOU HAVE NOT PERP'D ON KIDS; RIGHT?

15 A. HE DID SAY THAT; YES, SIR.

16 Q. AND AT SOME POINT IN TIME DURING THE  
17 CONVERSATION, MR. TUMMINS EXPRESSED TO MR. LEVASSEUR: LOOK, I  
18 WOULDN'T HAVE DONE THAT; I AM A SCHOOLTEACHER. CORRECT?

19 A. YES, SIR.

20 Q. AND AT THAT POINT IN TIME, OFFICER LEVASSEUR  
21 SAID, YEAH, THAT'S WHAT'S CONFUSING ME. CORRECT?

22 A. YES, SIR.

23 Q. NO DOUBT OFFICER LEVASSEUR HAD EXPRESSED TO YOU  
24 PRIOR TO THIS QUESTIONING THAT HE KNEW THAT MR. TUMMINS WAS A  
25 SCHOOLTEACHER?

1           A.       I DON'T RECALL HIM TELLING ME THAT.

2           Q.       OKAY. NOW, DURING THE COURSE OF THE  
3 QUESTIONING, OFFICER LEVASSEUR TOLD MR. TUMMINS THAT HE HAD AN  
4 OPTION OF PROSECUTING HIM FEDERALLY OR IN STATE COURT; IS THAT  
5 RIGHT?

6           A.       YES, SIR; HE DID.

7           Q.       IN FACT, HE TOLD MR. TUMMINS THAT, IF YOU ARE  
8 NOT HONEST WITH ME, THIS CAN GO HIGHER THAN IT NORMALLY WOULD;  
9 RIGHT?

10          A.       I DON'T BELIEVE HE SAID NORMALLY WOULD, BUT HE  
11 SAID SOMETHING ABOUT IF HE DIDN'T COOPERATE, THAT IT COULD GO  
12 HIGHER; YES, SIR.

13          MR. POTTER: MAY IT PLEASE THE COURT, IF I COULD PASS  
14 TO THE WITNESS A TRANSCRIPT.

15          THE COURT: BEFORE WE GET INTO THIS TRANSCRIPT --

16          MR. POTTER: YES, SIR.

17          THE COURT: IS THERE ANY DISPUTE ABOUT WHAT'S BEING  
18 HANDED THE WITNESS?

19          MR. POTTER: COUNSEL HAS A COPY OF IT.

20          THE COURT: I WANT TO KNOW IF THERE IS A DISPUTE ABOUT  
21 IT. I WANT TO RESOLVE THAT FIRST.

22          MR. EVERETT: YOUR HONOR, I HAVE NOT HAD AN OPPORTUNITY  
23 TO DO THE SAME DETAILED REVIEW OF MR. POTTER'S TRANSCRIPT THAT I  
24 THINK HE HAS DONE OF MINE. AND SO I HAVE NO IDEA IF IT'S  
25 ACCURATE OR WHERE --

1 THE COURT: WELL, WHY DON'T YOU GIVE HIM THE PAGE  
2 NUMBER, AND THEN YOU CAN LOOK AT THE PAGE NUMBER HE WANTS TO  
3 REFER TO ON YOURS, AND WE'LL SEE IF THERE IS A DISPUTE OR NOT.

4 MR. POTTER: I WILL DO THAT, YOUR HONOR. WHAT I  
5 INTENDED TO DO WAS HAND HIM THE TRANSCRIPT AND REFER HIM TO A  
6 PARTICULAR PAGE.

7 THE COURT: THERE HAS BEEN AN EVIDENTIARY ISSUE ABOUT  
8 THIS. BEFORE THE WITNESS STARTS TO TESTIFY, I WANT TO MAKE SURE  
9 THAT THERE IS NO DISPUTE ABOUT WHAT YOU ARE GOING TO ASK. DO  
10 YOU WANT TO GIVE HIM THE PAGE NUMBER AND THE LINE?

11 MR. POTTER: THAT'S WHAT I'M LOOKING FOR, YOUR HONOR.  
12 THE PARTICULAR PAGE NUMBER.

13 THE COURT: MR. MARSHAL, DO YOU WANT TO GIVE THE  
14 TRANSCRIPT BACK TO HIM?

15 MR. POTTER: PAGE 14. LET ME MAKE SURE I UNDERSTAND  
16 WHAT YOU ARE DOING. YOU WANT ME TO LET COUNSEL LOOK AT THAT  
17 PAGE BEFORE THE WITNESS LOOKS AT THE PAGE?

18 THE COURT: YES, BECAUSE THERE IS A MOTION TO STRIKE.  
19 THERE IS AN OBJECTION.

20 MR. POTTER: I UNDERSTAND. THE TOP OF PAGE 14.

21 MR. EVERETT: I DON'T HAVE AN OBJECTION TO A REFERENCE  
22 TO THAT PAGE, YOUR HONOR.

23 THE COURT: YOU MAY IT PASS IT TO THE WITNESS.  
24 BY MR. POTTER:

25 Q. TURN TO PAGE 14 OF THAT TRANSCRIPT, IF YOU

1        WOULD, DETECTIVE PATTERSON.

2            A.        YES, SIR.

3            Q.        ACTUALLY, IT WOULD BE AT THE BOTTOM.    THE  
4        SENTENCE BEGINS ON THE BOTTOM OF PAGE 13.

5            A.        YES, SIR.

6            Q.        IT'S DETECTIVE LEVASSEUR TALKING AND SAYING:  
7        WHEN IT COMES TO CASES LIKE THIS, I CAN TAKE IT  
8        FEDERALLY OR STATE.

9            A.        YES, SIR.

10          Q.        DID I READ THAT CORRECTLY?

11          A.        YOU DID.

12          Q.        DO YOU RECALL OFFICER LEVASSEUR SAYING THOSE  
13        WORDS?

14          A.        I DO.

15          Q.        PEOPLE THAT COOPERATE WITH ME AND TELL ME THE  
16        TRUTH, AND SOME PEOPLE, YOU KNOW, I'M GOING TO BE STRAIGHT WITH  
17        YOU, UP WITH YOU.    SOME PEOPLE HAVE DONE IT BY MISTAKE AND THAT  
18        IS FOUND OUT, BUT I DO A COMPLETE AND FULL FORENSIC EXAM.    DO  
19        YOU REMEMBER OFFICER LEVASSEUR SAYING THOSE WORDS?

20          A.        I DO.

21          MR. POTTER:    TO PAGE 86, COUNSEL.

22          MR. EVERETT:    OKAY.

23          THE COURT:    PAGE 86, DID YOU SAY?

24          MR. POTTER:    YES, SIR.

25          MR. EVERETT:    THE TOP?

1 MR. POTTER: I'M SORRY, IT'S NOT PAGE 86. PAGE 28.

2 THE COURT: DO YOU ALL WANT A BRIEF RECESS SO YOU CAN  
3 GO OVER THE PAGES, MR. EVERITT?

4 MR. POTTER: THAT WOULD BE GREAT.

5 THE COURT: PARDON?

6 MR. EVERETT: YES, YOUR HONOR.

7 THE COURT: WHY DON'T YOU GIVE HIM THE -- DESIGNATE THE  
8 PAGES YOU WANT TO REVIEW WITH THE WITNESS, AND YOU ALL REVIEW  
9 THOSE PAGES DURING THE BREAK. WE'LL SEE IF THERE IS AN  
10 OBJECTION. WE'RE IN RECESS.

11 (RECESS.)

12 THE COURT: ARE YOU READY?

13 MR. EVERETT: I APPRECIATE THE COURT'S PATIENCE IN  
14 ALLOWING US TO DO THAT.

15 BY MR. POTTER:

16 Q. DETECTIVE PATTERSON, I PASSED YOU A TRANSCRIPT.  
17 COUNSEL FOR THE GOVERNMENT HAS HAD A CHANCE TO LOOK AT THAT. I  
18 WANT TO ASK YOU ABOUT CERTAIN PAGES IN THAT TRANSCRIPT; IS THAT  
19 OKAY?

20 A. YES, SIR.

21 Q. IF YOU WOULD TAKE A LOOK, PLEASE, AT PAGE 5 OF  
22 THE TRANSCRIPT.

23 A. OKAY.

24 Q. TAKE A MOMENT TO REVIEW PAGE 5, IF YOU WOULD.  
25 PARTICULARLY I'M LOOKING AT LINE 7 OF PAGE 5.

1           A.       YES, SIR.

2           Q.       SEE AT LINE 7 OF PAGE 5 WHERE DETECTIVE --  
3       LIEUTENANT LEVASSEUR REQUESTED THAT THE DEFENDANT HAVE A SEAT?

4           A.       YES, SIR.

5           Q.       IF YOU WOULD TAKE A LOOK AT PAGE 13 OF THE  
6       TRANSCRIPT.

7           A.       YES, SIR.

8           Q.       LINE 20. AT LINE 20 DO YOU SEE WHERE LIEUTENANT  
9       LEVASSEUR STATED: IF YOU ARE HONEST WITH ME AND YOU COOPERATE,  
10      THINGS CAN WORK AT A LESS THAN HIGHER LEVEL THAN NORMALLY WILL.  
11      I HAVE TWO OPTIONS?

12          A.       I DO.

13          Q.       AND THEN MR. TUMMINS SAYS: UH-HUH.

14                AND MR. LEVASSEUR GOES ON TO SAY: WHEN IT COMES TO  
15      CASES LIKE THIS, I CAN TAKE IT FEDERALLY OR STATE.

16                DO YOU SEE WHERE LIEUTENANT LEVASSEUR SAYS THAT?

17          A.       YES, SIR.

18          Q.       IF YOU WOULD, PLEASE, LOOK AT PAGE 20. AND AS  
19      YOU ARE DOING THAT, DO YOU RECALL LIEUTENANT LEVASSEUR MAKING  
20      THOSE STATEMENTS?

21          A.       YES, SIR; I BELIEVE SO. WORDS TO THAT EFFECT.  
22      I HAVEN'T HAD A CHANCE TO COMPARE THIS WHILE LISTENING TO THE  
23      AUDIO, BUT ROUGHLY, GENERALLY, I BELIEVE SO; YES, SIR.

24          Q.       OKAY. PAGE 20.

25          A.       YES, SIR.

1 Q. TAKE A LOOK, PLEASE, AT LINE 18.

2 A. YES, SIR.

3 Q. LIEUTENANT LEVASSEUR AT THAT POINT IN TIME IS  
4 TALKING TO MR. TUMMINS AND STATES: IT ALL DEPENDS IF YOU ARE  
5 HONEST WITH ME OR NOT, I'M GOING TO TELL YOU. IF YOU'RE NOT  
6 HONEST WITH ME, AND YOU ARE LYING TO ME, AND I DO A FORENSIC  
7 EXAM, AND FIND OUT THAT YOU WERE LYING TO ME, I'M GOING TO  
8 PROSECUTE YOU TO THE FULLEST EXTENT OF THE LAW.

9 A. YES, SIR.

10 Q. YOU DO RECALL LIEUTENANT LEVASSEUR MAKING THAT  
11 COMMENT?

12 A. I DO.

13 Q. TAKE A LOOK, PLEASE, AT PAGE 23.

14 A. YES, SIR.

15 Q. AGAIN AT LINE 19. LIEUTENANT LEVASSEUR ASKED  
16 MR. TUMMINS TO, MOVE OVER HERE?

17 A. YES, SIR.

18 Q. PHYSICALLY DIRECTING WHERE HE SHOULD MOVE TO; IS  
19 THAT RIGHT?

20 A. IT APPEARS SO; YES, SIR.

21 Q. OKAY. TAKE A LOOK THEN, PLEASE, AT PAGE 28.

22 A. YES, SIR.

23 Q. LIEUTENANT LEVASSEUR AT THE TOP OF PAGE 28?

24 A. YES, SIR.

25 Q. LIEUTENANT LEVASSEUR IS TALKING TO MR. TUMMINS,

1 EXPLAINING TO HIM THAT HE THINKS THIS IS MORE THAN A  
2 ONE-TIME EVENT, AND TELLING HIM THAT, YOU HAVE GOT TO GIVE ME A  
3 BETTER EXPLANATION THAN WHAT YOU GAVE; IS THAT CORRECT?

4 A. YES, SIR.

5 Q. ESSENTIALLY DIRECTING HIM TO GIVE HIM AN  
6 EXPLANATION; IS THAT RIGHT?

7 A. YES, SIR.

8 Q. IF YOU WOULD TAKE A LOOK, PLEASE, AT PAGE 29?

9 A. YES, SIR.

10 Q. PAGE 29, LINE 4. OFFICER LEVASSEUR SAID,  
11 BECAUSE I'M GOING TO BE TRYING TO FIGURE OUT IF SOMEBODY WHO  
12 DOWNLOADS CHILD PORN IS ALSO A PEDOPHILE?

13 A. YES, SIR.

14 Q. DO YOU SEE WHERE HE SAYS THAT?

15 A. YES, SIR.

16 Q. AND AT THE BOTTOM OF PAGE 29, OFFICER LEVASSEUR  
17 LEVASSEUR PROCEEDS TO SAY: I DON'T WANT TO -- YOU'VE GOT TO  
18 UNDERSTAND SOMETHING. I DON'T WANT TO TELL YOU WHAT THE TRUTH  
19 IS. I NEED YOU TO TELL ME WHAT THE TRUTH IS.

20 A. YES, SIR.

21 Q. AND OBVIOUSLY, THAT IS AN EXCHANGE THAT WENT ON  
22 FOR SOMETIME; RIGHT?

23 A. YES, SIR.

24 Q. THROUGHOUT THAT TWO HOUR PERIOD, OFFICER  
25 LEVASSEUR IS TELLING MR. TUMMINS THAT HE NEEDS HIM TO TELL HIM



1 THE TRUTH; IS THAT RIGHT?

2 A. THAT'S CORRECT.

3 Q. TAKE A LOOK, PLEASE, AT PAGE 43.

4 A. OKAY.

5 Q. LINE 16. AGAIN, THIS IS MORE OF THAT EXCHANGE,  
6 BUT OFFICER LEVASSEUR SAYING: I'M NOT SAYING YOU HAVE TO LISTEN  
7 TO ME NOW, I'M NOT SAYING YOU ARE --

8 THE COURT: WHOA, WHOA, WAIT. WHAT PAGE?

9 MR. POTTER: 43, I'M SORRY.

10 Q. LINE 16, OFFICER LEVASSEUR SAYING: I'M NOT  
11 SAYING YOU HAVE TO LISTEN TO ME, NOW. I'M NOT SAYING YOU ARE A  
12 PEDOPHILE, BUT YOU HAVE TO GIVE ME SOME TYPE OF EXPLANATION AS  
13 TO WHY YOU WOULD KNOWINGLY DOWNLOAD A FILE THAT IS SAYING IT'S  
14 CHILD PORN AND THEN WATCH IT AND THEN DELETE IT. YOU'VE GOT TO  
15 EXPLAIN TO ME -- YOU HAVE TO MAKE ME BELIEVE THAT, A, YOU ARE  
16 NOT A PEDOPHILE, AND YOU ARE NOT GOING TO DO THAT WITH THE  
17 EXPLANATION THAT YOU ARE GIVING.

18 IS THAT RIGHT?

19 A. THAT'S CORRECT.

20 Q. AND THAT'S CONSISTENT WITH WHAT YOU HEARD  
21 OFFICER LEVASSEUR SAY TO MR. TUMMINS, BOTH THERE AND ON THE  
22 AUDIOTAPE THAT YOU REVIEWED; IS THAT CORRECT?

23 A. WITHOUT GOING WORD FOR WORD, YES, SIR, I BELIEVE  
24 THAT'S THE CONTEXT.

25 Q. IF YOU WOULD, PLEASE, TAKE A LOOK AT PAGE 44.

1           A.       YES, SIR.

2           Q.       HERE IT LOOKS LIKE OFFICER LEVASSEUR IS MAYBE  
3       SPEAKING TO MRS. TUMMINS IN THE MIDDLE OF THAT PAGE.  THERE WERE  
4       OCCASIONS WHEN ALL FOUR OF YOU WERE PRESENT; IS THAT RIGHT?

5           A.       YES, SIR; THERE WERE.

6           Q.       LOOKS LIKE MRS. TUMMINS MAKES THE STATEMENT:  
7       YES, AT LINE 9.  AND THEN AT LINE 10 ON PAGE 44, OFFICER  
8       LEVASSEUR SAYS, MOST PEOPLE THAT DOWNLOAD CHILD PORNOGRAPHY HAVE  
9       AN INTEREST IN KIDS.  HE'S A SCHOOLTEACHER.  I WANT HIM TO  
10      CONVINCE ME THAT HE IS NOT -- IS THAT -- I MEAN, IS THAT ASKING  
11      TOO MUCH?

12          A.       YES, SIR.

13          Q.       AND THAT'S CONSISTENT WITH WHAT YOU HEARD  
14      OFFICER LEVASSEUR SAY THAT EVENING; IS THAT RIGHT?

15          A.       YES, SIR.

16          Q.       AND THEN MR. TUMMINS SPEAKS IMMEDIATELY AFTER  
17      THAT IN RESPONSE; IS THAT RIGHT?

18          A.       YES, HE DID.

19          Q.       LET'S TAKE A LOOK AT PAGE 45.  THE BOTTOM OF  
20      PAGE 45, LINE 23.

21          A.       YES, SIR.

22          Q.       AGAIN, OFFICER LEVASSEUR TALKING.  WHAT I REALLY  
23      NEED, OKAY?  I'M NOT GOING TO GET ANYMORE, BUT WHAT I REALLY  
24      NEED IS WHAT YOU CAN REMEMBER.  I NEED YOU --

25                 AND THE TOP OF PAGE 46.

1           -- TO GIVE ME A BALLPARK ESTIMATE OF HOW MANY TIMES YOU  
2 HAVE DOWNLOADED CHILD PORN TO THE BEST OF YOUR RECOLLECTION, AND  
3 EXPLAIN TO ME, GIVE ME AN EXPLANATION AS TO WHY, BECAUSE ONE  
4 EXPLANATION THAT I'M LOOKING AT IS THAT YOU ARE INTO KIDS, AND  
5 I'M GOING TO HAVE TO INVESTIGATE THAT. MA'AM, YOU ARE SHAKING  
6 YOUR HEAD.

7           THAT IS OFFICER LEVASSEUR TALKING; CORRECT?

8           A.       YES, SIR.

9           Q.       AND THAT'S CONSISTENT WITH WHAT YOU HEARD  
10 OFFICER LEVASSEUR SAY; IS THAT RIGHT?

11          A.       ROUGHLY SO; YES, SIR.

12          Q.       LET'S TAKE A LOOK AT PAGE 55. PAGE 55, LINE 16.  
13 OFFICER LEVASSEUR IS TALKING AGAIN TO MR. TUMMINS AND SAYS:  
14 I'VE GOT YOU DEAD TO RIGHTS FOR THIS, THIS CHILD PORN, BUT I  
15 NEED YOU TO MAKE ME BELIEVE THAT YOU ARE NOT A DANGER TO  
16 CHILDREN.

17          A.       YES, SIR.

18          Q.       INSTRUCTING MR. TUMMINS TO GIVE HIM AN  
19 EXPLANATION; IS THAT RIGHT?

20          A.       YES, SIR.

21          Q.       TURN OVER, IF YOU WOULD, PLEASE, TO PAGE 64,  
22 LINE 3. THIS IS AN EXCHANGE BACK AND FORTH. IF YOU WILL READ  
23 THROUGH THAT DOWN TO ABOUT LINE 16, EXCHANGE BETWEEN MR. TUMMINS  
24 AND THE DEFENDANT -- EXCUSE ME, MR. LEVASSEUR AND THE DEFENDANT.  
25 FOLLOW ALONG WITH ME, IF YOU CAN.

1           A.       YES, SIR.

2           Q.       TELL ME IF THIS IS ACCURATE.

3               WELL, I NEED YOU TO LOOK AT ME IN THE FACE,

4           MR. TUMMINS:   OKAY.   ALL RIGHT.

5           OFFICER LEVASSEUR:   STRAIGHT AS YOU CAN, DON'T CLOSE

6   YOUR EYES, DON'T BLINK, DON'T DO ANYTHING.   HAVE YOU EVER

7   MOLESTED ANY KIDS?

8           MR. TUMMINS:   ABSOLUTELY NOT.

9           MR. LEVASSEUR:   WOULD YOU BE WILLING TO TAKE A LIE  
10   DETECTOR TEST?

11               DID I READ THAT CORRECTLY?

12           A.       YES, SIR; YOU DID.   WITH THE EXCEPTION OF LINE  
13   7.   I BELIEVE DETECTIVE LEVASSEUR SAID, DON'T CLOSE YOUR EYES.  
14   AND YOU SAID THAT, BUT IT'S NOT IN HERE.

15           Q.       AND THAT'S WHAT COUNSEL AND I DISCUSSED AT  
16   BREAK.

17           A.       I DIDN'T HEAR THAT, I'M SORRY.

18           Q.       DON'T CLOSE YOUR EYES.   IN FACT, WHAT OFFICER  
19   LEVASSEUR WAS SAYING TO HIM AT THAT POINT IN TIME WAS, LOOK AT  
20   ME AS STRAIGHT AS -- BASICALLY, LOOK AT ME IN THE FACE, DON'T  
21   CLOSE YOUR EYES, DON'T BLINK, DON'T DO NOTHING.   HAVE YOU EVER  
22   MOLESTED ANY KIDS; IS THAT RIGHT?

23           A.       YES, SIR.

24           Q.       INSTRUCTING HIM TO STAND THERE AND ANSWER THIS  
25   QUESTION?

1 A. YES, SIR.

2 Q. AT NO TIME DURING THE TIME THAT YOU WERE IN THE  
3 HOME, DID YOU EVER OVERHEAR OFFICER LEVASSEUR TELL MR. TUMMINS  
4 THAT HE HAD A RIGHT TO AN ATTORNEY? IS THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. AT NO TIME DID YOU EVER HEAR OFFICER LEVASSEUR  
7 MIRANDIZE MR. TUMMINS; IS THAT CORRECT?

8 A. YES, SIR.

9 Q. WHEN I SAY MIRANDIZE, OBVIOUSLY, YOU KNOW WHAT  
10 THAT MEANS?

11 A. I DO.

12 Q. READING SOMEONE THEIR MIRANDA RIGHTS?

13 A. YES, SIR; THAT'S CORRECT.

14 Q. AT NO TIME WHILE THEY WERE THERE, DID YOU HEAR  
15 MR. LEVASSEUR, OFFICER LEVASSEUR, TELL MR. TUMMINS THAT HE HAD  
16 THE RIGHT NOT TO SPEAK, TO SIMPLY REMAIN SILENT?

17 A. THAT'S CORRECT.

18 Q. ON MORE THAN ONE OCCASION, YOU DID HEAR OFFICER  
19 LEVASSEUR INSTRUCT MR. TUMMINS TO MOVE TO DIFFERENT PARTS OF THE  
20 HOUSE. IS THAT RIGHT?

21 A. YES, SIR. LIKE SIT HERE OR -- YES, SIR. IS  
22 THAT WHAT YOU ARE --

23 Q. FOLLOW ME UPSTAIRS?

24 A. YES, SIR.

25 Q. SIT HERE?

1           A.       THAT WAS IN THERE; YES, SIR.

2           Q.       MOVE OVER HERE?

3           A.       YES, SIR.

4           Q.       DON'T DO ANYTHING?

5           A.       YOU'RE TALKING ABOUT THE BLINKING AND STUFF?

6           Q.       YES, SIR.

7           A.       YES, SIR.

8           Q.       DON'T CLOSE YOUR EYES?

9           A.       YES, SIR.

10          Q.       DON'T TOUCH THE COMPUTER?

11          A.       YES, SIR.

12          Q.       AND THEN OFFICER LEVASSEUR WROTE A STATEMENT

13       THAT I BELIEVE HE ADMITS WAS A PARAPHRASING OF MR. TUMMINS; IS

14       THAT RIGHT?

15          A.       THAT'S CORRECT.

16          Q.       AND THEN HAD MR. TUMMINS SIGN THAT STATEMENT; IS

17       THAT RIGHT?

18          A.       YES, SIR.

19          Q.       MR. TUMMINS WAS VISIBLY UPSET; IS THAT TRUE?

20          A.       I WOULD SAY HE WAS, YES, SIR.

21          Q.       HE WAS CRYING?

22          A.       I BELIEVE AT THAT POINT, YES, SIR.

23          Q.       IN FACT, AT ONE TIME OFFICER LEVASSEUR TOLD HIM

24       TO MAN UP, BE A MAN, STOP CRYING; IS THAT RIGHT?

25          A.       THAT'S IN THE TRANSCRIPT; YES, SIR.

1 Q. AT ONE POINT IN TIME, HE TOLD MR. TUMMINS HE WAS  
2 GOING TO HAVE TO TAKE RESPONSIBILITY?

3 A. I BELIEVE THAT WAS IN THAT SAME TIME FRAME, YES,  
4 SIR.

5 Q. IN FACT, HE SAID THAT HE WAS GOING TO -- HE  
6 WANTED MR. TUMMINS TO ACCOMPANY HIM OUT TO HIS PATROL CAR TO  
7 WRITE THIS STATEMENT; IS THAT RIGHT?

8 A. HE DID; YES, SIR.

9 MR. POTTER: THAT'S ALL I HAVE.

10 THE WITNESS: MR. POTTER, I HAVE SOMETHING -- YOUR  
11 HONOR, I'M SORRY, I TOLD YOU SOMETHING INCORRECTLY. WHEN WE  
12 TOOK A BREAK, I RECALLED IT. YOU HAD ASKED HOW WE VERIFIED WHO  
13 LIVED IN THE HOUSE. WHEN I CALLED THE ELECTRIC COMPANY, THEY  
14 DID TELL ME MR. TUMMINS WORKED FOR THE SCHOOL SYSTEM. THEY  
15 DIDN'T SAY HE WAS A TEACHER, BUT, YOU KNOW, YOU HAD ASKED ME  
16 THAT QUESTION. I TOLD YOU I DIDN'T KNOW. I DO BELIEVE HE  
17 WORKED FOR THE SCHOOL SYSTEM.

18 MR. POTTER: I APPRECIATE YOUR HONESTY. THANK YOU.

19 MR. EVERETT: YOUR HONOR, JUST A MOMENT.

20 THE COURT: ALL RIGHT.

21 MR. EVERETT: YOUR HONOR, I WOULD JUST LIKE THE RECORD  
22 TO REFLECT THAT DETECTIVE PATTERSON AND I DID NOT DISCUSS HIS  
23 TESTIMONY WHILE WE WERE IN RECESS. AND THAT RECOLLECTION IS  
24 BASED ON HIS OWN RECOLLECTION AND NOT A CONVERSATION WITH  
25 COUNSEL.

1 THE COURT: THE COURT ACCEPTS THAT.

2 MR. EVERETT: THANK YOU, SIR. YOUR HONOR, I HAVE JUST  
3 A FEW QUESTIONS.

4 THE COURT: ALL RIGHT.

5 REDIRECT EXAMINATION

6 BY MR. EVERETT:

7 Q. LET'S START AT THE END OF THE CROSS EXAMINATION  
8 ABOUT THE GOING OUT TO THE -- THE REQUEST TO GO OUT TO THE  
9 PATROL CAR TO DO A STATEMENT.

10 A. YES, SIR.

11 Q. DID YOU HEAR OR SEE ANYTHING ABOUT WHY DETECTIVE  
12 LEVASSEUR MADE THAT REQUEST?

13 A. NO, SIR. I JUST GATHERED IT WAS BECAUSE MR.  
14 TUMMINS WAS TALKING MORE FREELY WITHOUT BEING IN FRONT OF HIS  
15 WIFE, IS WHAT I ASSUMED.

16 Q. WAS IT VERY HOT IN THE HOUSE THAT DAY?

17 A. UPSTAIRS WAS TERRIBLY HOT. DOWNSTAIRS WAS  
18 FAIRLY COMFORTABLE. I DON'T KNOW ABOUT WHERE THEY HAD BEEN,  
19 BECAUSE I NEVER WENT TO WHERE THEY HAD BEEN.

20 Q. OKAY. NOW, WHILE THE INTERACTIONS BETWEEN  
21 MR. TUMMINS AND DETECTIVE LEVASSEUR WAS HAPPENING, WAS DETECTIVE  
22 LEVASSEUR ONLY QUESTIONING MR. TUMMINS, OR WAS HE DOING OTHER  
23 STUFF, AS FAR AS YOU KNOW?

24 A. HE WAS DOING OTHER STUFF.

25 Q. WAS HE DOWN ON HIS KNEES WHILE HE WAS DOING



1 OTHER STUFF?

2 A. YES, SIR.

3 Q. WAS HE DOWN ON HIS KNEES THE WAY AN ELECTRICIAN  
4 OR PLUMBER MIGHT BE DOWN ON THEIR KNEES WHILE WORKING ON  
5 SOMETHING?

6 A. HE WAS.

7 Q. OKAY. AND SO WHILE HE WAS DISCUSSING MR.  
8 TUMMINS' SITUATION WITH MR. TUMMINS, HE WAS ALSO DOWN ON HIS  
9 KNEES WORKING ON THE COMPUTER? IS THAT YOUR TESTIMONY?

10 A. IT IS.

11 Q. OKAY. LETS GO TO PAGE 5 OF THE TRANSCRIPT THAT  
12 MR. POTTER ASKED YOU ABOUT. NOW, THIS IS WHERE MR. POTTER  
13 ASKED YOU, ABOUT LINES 7 AND 8.

14 WELL, NO, GO AHEAD AND HAVE A SEAT, IF YOU WOULD.  
15 DO YOU REMEMBER THAT QUESTION?

16 A. YES, SIR.

17 Q. COULD YOU PLEASE READ PAGE -- CAN YOU PLEASE  
18 READ LINES 17 AND 18 OF PAGE 5?

19 A. YES, SIR.

20 MR. TUMMINS: LAURA, CAN YOU COME UP? THIS SEEMS  
21 PRETTY SERIOUS.

22 Q. ALL RIGHT. WHO IS TALKING THERE?

23 A. MR. TUMMINS.

24 Q. WHO IS HE TALKING TO?

25 A. MRS. TUMMINS.

1 Q. AND WHAT IS HE ASKING HER TO DO?

2 A. SHE WAS DOWNSTAIRS AT THAT POINT. IT WAS  
3 INITIALLY JUST ME AND DETECTIVE LEVASSEUR, MR. TUMMINS UPSTAIRS.  
4 HE WAS ASKING HER TO COME UP AS WELL.

5 Q. AND IS THIS AN INSTANCE OF MRS. TUMMINS BEING  
6 ALLOWED TO MOVE FREELY ABOUT THE HOME?

7 A. YES, SIR.

8 Q. LET'S GO TO PAGE 23. NOW, I BELIEVE MR. POTTER  
9 ASKED YOU A QUESTION ABOUT LINES 19 AND 20. COULD YOU PLEASE  
10 READ WHAT THAT SAYS?

11 A. LEVASSEUR: COULD I GET TO YOU MOVE OVER HERE.

12 Q. WERE YOU THERE, AS BEST YOU CAN RECALL, WHEN  
13 THAT WAS SAID BY DETECTIVE LEVASSEUR?

14 A. YES, SIR, I WAS, BECAUSE THIS IS WHEN DETECTIVE  
15 LEVASSEUR READ PART OF THE SEARCH WARRANT. I WAS THERE FOR  
16 THIS.

17 Q. DO YOU KNOW WHY OR WHAT HE WAS ASKING  
18 MR. TUMMINS TO MOVE FOR?

19 A. I DON'T RECALL.

20 Q. OKAY. IS IT POSSIBLE HE WAS ASKING HIM TO MOVE  
21 AWAY FROM THE COMPUTERS SO THAT HE COULD INSPECT THEM?

22 MR. POTTER: OBJECT TO SPECULATION, YOUR HONOR.

23 THE COURT: SUSTAINED.

24 BY MR. EVERETT:

25 Q. LET'S GO TO PAGE 28 OF THE TRANSCRIPT, PLEASE.

1           A.       YES, SIR.

2           Q.       COULD YOU PLEASE READ LINES 8 THROUGH 11?

3           A.       YES, SIR.

4           MR. TUMMINS: I'M --

5           Q.       I'M SORRY, LINE 8, PLEASE.

6           A.       LINE 8?

7           Q.       YES, LINE 8.

8           A.       ON PAGE 28?

9           Q.       ON PAGE 28.

10          A.       YES, SIR. IT STARTS WITH MR. TUMMINS.

11          Q.       CHECK CLOSELY AT THE BEGINNING OF LINE 8. ON

12 PAGE 28?

13          A.       OH, I'M SORRY.

14          MRS. TUMMINS: HOW MANY TIMES ARE YOU TALKING ABOUT?

15          LIEUTENANT LEVASSEUR: ARE YOU ASKING ME OR ASKING HIM?

16          Q.       NOW, IS THIS AN INSTANCE OF MRS. TUMMINS ASKING

17 QUESTIONS OF DETECTIVE LEVASSEUR?

18          A.       YES, SIR.

19          Q.       COULD YOU PLEASE GO TO PAGE 43. COULD YOU

20 PLEASE READ LINES 3 THROUGH 5.

21          A.       YES, SIR.

22          MRS. TUMMINS: WHAT IF YOU TYPE IN THE WORD, LIKE YOU

23 SAID, IF YOU TYPE IN THE WORD ANAL? I MEAN, IS IT GOING TO

24 BRING UP CHILD PORNOGRAPHY?

25          Q.       IS THAT ANOTHER INSTANCE OF MRS. TUMMINS ASKING

1 QUESTIONS?

2 A. YES, SIR; SHE WAS ASKING DETECTIVE LEVASSEUR  
3 THAT.

4 Q. WOULD YOU PLEASE GO TO PAGE 45.

5 A. YES, SIR.

6 Q. COULD YOU PLEASE START READING AT LINE 3 AND GO  
7 ALL THE WAY DOWN TO LINE 22.

8 A. TO LINE 22?

9 Q. YES.

10 A. YES, SIR. STARTING WITH LINE 3.

11 MRS. TUMMINS: DID YOU DOWNLOAD CHILD PORN?

12 MR. TUMMINS: I'VE SEEN THAT BEFORE, YES.

13 MRS. TUMMINS: DID YOU DOWNLOAD IT?

14 MR. TUMMINS: YES. WHEN YOU CLICK ON IT. AND THAT'S  
15 WHAT HAPPENS WHEN YOU CLICK ON IT.

16 MRS. TUMMINS: IT DOWNLOADS?

17 MR. TUMMINS: YOU SEE THE NAME AND DOWNLOAD IT.

18 INAUDIBLE, 11 YEAR OLD'S WHATEVER SISTER.

19 MRS. TUMMINS: WHY, INAUDIBLE.

20 MR. TUMMINS: INAUDIBLE.

21 MRS. TUMMINS: INAUDIBLE.

22 MR. TUMMINS: I DON'T KNOW.

23 MRS. TUMMINS: ONCE? TWICE?

24 MR. TUMMINS: MORE THAN ONCE.

25 MRS. TUMMINS: IT WAS TWICE?

1 MR. TUMMINS:  
2 Q. I'M SORRY, WILL YOU STOP THERE?  
3 A. YES, SIR.  
4 Q. ON LINE 20, I THINK YOU MAY HAVE HAD A MIS-READ.  
5 A. WAS IT TWICE?  
6 Q. GO AHEAD.  
7 A. MR. TUMMINS: INAUDIBLE.  
8 MRS. TUMMINS: INAUDIBLE.  
9 Q. IS THAT ANOTHER EXAMPLE OF MRS. TUMMINS ASKING  
10 QUESTIONS?  
11 A. YES, SIR, TO MR. TUMMINS AT THIS TIME.  
12 Q. SHE IS QUESTIONING MR. TUMMINS. IS THAT FAIR TO  
13 SAY?  
14 A. YES, SIR.  
15 Q. COULD YOU PLEASE GO TO PAGE 55?  
16 A. YES, SIR.  
17 Q. I THINK YOU SEE YOUR NAME THERE; IS THAT RIGHT,  
18 DETECTIVE PATTERSON?  
19 A. I DO.  
20 Q. PLEASE READ LINES 6 AND 7.  
21 A. LINE 6 STARTS:  
22 DETECTIVE PATTERSON: SETH, IF YOU HAVE ANYTHING TO  
23 TELL HIM, NOW WOULD BE THE TIME.  
24 Q. NOW, DO YOU REMEMBER SAYING SOMETHING TO THAT  
25 EFFECT?

1           A.       I DO.

2           Q.       OKAY. IS THAT SOMETHING THAT YOU SAY FROM TIME

3 TO TIME WHEN YOU ARE INVESTIGATING CASES?

4           A.       YES, SIR.

5           Q.       WHY DO YOU SAY THINGS LIKE THAT?

6           A.       JUST TO ENCOURAGE THEM. AND IF YOU HAVE

7 SOMETHING YOU NEED TO TELL HIM, WE'RE GETTING READY TO LEAVE,

8 YOU NEED TO GO AHEAD AND TELL HIM. HE HAS TAKEN THE STUFF, HE

9 HAS PUT IT IN THE CAR. GO AHEAD AND BE HONEST WITH HIM.

10          MR. EVERETT: JUST A MINUTE, YOUR HONOR.

11          THE COURT: ALL RIGHT.

12 BY MR. EVERETT:

13          Q.       NOW, WITH RESPECT TO THE PATROL CAR, DID

14 MR. TUMMINS EVER GO TO THE PATROL CAR?

15          A.       HE DID NOT.

16          Q.       DID HE EVER GET IN THE PATROL CAR?

17          A.       NO, SIR.

18          MR. EVERETT: OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

19 THANK YOU.

20          THE COURT: ANY REDIRECT?

21          MR. POTTER: NO, SIR.

22          THE COURT: YOU MAY STEP DOWN.

23          CALL YOUR NEXT WITNESS.

24          MR. EVERETT: JUST A MINUTE, IF YOUR HONOR PLEASE.

25 YOUR HONOR, THE GOVERNMENT WILL REST.

1 THE COURT: YOU MAY CALL ANY PROOF ON BEHALF OF THE  
2 DEFENDANT.

3 MR. POTTER: NO, SIR.

4 THE COURT: DO YOU ALL WANT TO MAKE PROPOSED FINDINGS  
5 OF FACT? DO YOU WANT TO ARGUE? WHAT DO YOU WANT TO DO?

6 MR. EVERETT: YOUR HONOR, I'M NOT -- GIVEN THAT WE HAVE  
7 A TRANSCRIPT, I'M NOT SURE WHAT PROPOSED FINDINGS OF FACT WOULD  
8 ENTAIL.

9 THE COURT: NO, I JUST GIVE LAWYERS THE OPTION.  
10 WHATEVER THE LAWYERS FEEL WOULD BE EFFECTIVE FOR THEIR  
11 REPRESENTATION OF THEIR CLIENT, I DEFER TO THEM.

12 MR. EVERETT: MAY I DISCUSS WITH MR. POTTER, SIR?

13 THE COURT: ALL RIGHT.

14 MR. EVERETT: YOUR HONOR, MR. POTTER CAN SPEAK FOR  
15 HIMSELF IF HE DISAGREES, BUT I THINK THE PARTIES DON'T THINK ANY  
16 FURTHER BRIEFING IS NECESSARY UNLESS YOUR HONOR WANTS TO REQUEST  
17 IT.

18 THE COURT: NO, I WILL LEAVE THAT TO YOU ALL.

19 MR. EVERETT: I THINK I'M SATISFIED WITH THE RECORD AS  
20 IT STANDS. AND I UNDERSTAND MR. POTTER IS ALSO SATISFIED.

21 THE COURT: IS THAT YOUR VIEW, MR. POTTER?

22 MR. POTTER: THAT IS MY VIEW; YES, SIR.

23 THE COURT: DOES ANYBODY WANT TO ARGUE?

24 MR. POTTER: YOUR HONOR, THE GOVERNMENT HAS, I THINK,  
25 RESERVED SO I COULD GO FIRST. I WANT TO MAKE A COUPLE OF

1 CLOSING STATEMENTS, IF I COULD.

2 THE LAW IS VERY CLEAR, AND YOUR HONOR IS FAMILIAR WITH  
3 IT, SO I WON'T BELABOR WHAT THE LAW IS. BUT NO DOUBT  
4 MR. TUMMINS WAS A SUSPECT, NO DOUBT THAT HE WAS INTERROGATED,  
5 MULTIPLE QUESTIONS WERE ASKED IN AN EFFORT TO ELICIT  
6 INCRIMINATING INFORMATION. AND SO THE PIVOTAL QUESTION IS GOING  
7 TO BE WHETHER OR NOT HE WAS IN CUSTODY. OBVIOUSLY, THE COURT  
8 RECOGNIZES THAT'S THE ISSUE.

9 AND THE CASE LAW IS CLEAR THAT IF A PERSON IS NOT UNDER  
10 A FORMAL ARREST, THE ISSUE IS GOING TO BE WHETHER OR NOT THEY  
11 WERE RESTRAINED IN ANY SIGNIFICANT WAY, THEIR MOVEMENT WAS  
12 RETRAINED IN ANY SIGNIFICANT WAY.

13 ALSO, I THINK THE SIXTH CIRCUIT EMPLOYS TOTALITY OF  
14 CIRCUMSTANCES TESTS IN THESE TYPES OF SITUATIONS. AND ONE OF  
15 THE THINGS THAT THE COURT LOOKS AT IS WHAT A REASONABLE PERSON  
16 IN MR. TUMMINS'S POSITION WOULD HAVE FELT THAT HE WAS FREE TO  
17 LEAVE. MORE THAN ONE TIME THE TRANSCRIPT WILL BEAR OUT, IF YOUR  
18 HONOR REVIEWS THOSE, AND ALSO FROM THE TESTIMONY OF  
19 MR. PATTERSON, IT'S CLEAR THAT MR. TUMMINS WAS, AFTER TWO HOURS  
20 OF QUESTIONING, REPEATEDLY TOLD THAT HE COULD BE PROSECUTED  
21 FEDERALLY IF HE DIDN'T TELL THE TRUTH. SO THERE WAS A HAMMER  
22 THERE, HE'S NOT TALKING.

23 ALSO, HE WAS TOLD THAT HE NEEDED TO RESTRAIN HIS  
24 MOVEMENT, IN THE SENSE THAT HE WAS TOLD TO MOVE HERE OR MOVE  
25 THERE, FOLLOW ME, DON'T BLINK, DON'T CLOSE YOUR EYES, LOOK ME



1 STRAIGHT IN THE FACE, ANSWER MY QUESTIONS. YOU HAVE TO BE  
2 HONEST WITH ME. ALL OF THOSE -- THE TOTALITY OF ALL OF THOSE  
3 QUESTIONS TOGETHER WOULD LEAD ANY REASONABLE PERSON TO BELIEVE  
4 IN MR. TUMMINS' SHOES THAT HE HAD TO FOLLOW THESE OFFICERS'  
5 INSTRUCTIONS. AND SO WE RESPECTFULLY ASK THAT THE COURT GRANT  
6 OUR MOTION.

7 THE COURT: FOR THE GOVERNMENT?

8 MR. EVERETT: YOUR HONOR, I THINK THAT MR. POTTER IS  
9 CORRECT WHEN SAYS THE LAW IS CLEAR ON THIS ISSUE. IT IS A  
10 TOTALITY OF THE CIRCUMSTANCES. AND THE COURT IS DIRECTED BY THE  
11 SIXTH CIRCUIT TO LOOK AT THE OBJECTIVE CIRCUMSTANCES OF THE  
12 SITUATION TO DETERMINE HOW A REASONABLE PERSON WOULD HAVE GAUGED  
13 HIS FREEDOM OF ACTION.

14 SOME FACTORS THAT THE SIXTH CIRCUIT SAID THE COURT  
15 COULD LOOK TO IS THE LOCATION OF THE INTERACTION, THE LENGTH AND  
16 MANNER OF ANY QUESTIONING, FREEDOM OF MOVEMENT, AND STATEMENTS  
17 BY THE OFFICERS THAT HE WAS NOT REQUIRED TO ANSWER QUESTIONS AND  
18 NOT UNDER ARREST.

19 I THINK, BASED ON THE TESTIMONY OF DETECTIVE PATTERSON,  
20 EACH OF THOSE FACTORS WEIGHS IN FAVOR OF FINDING A NONCUSTODIAL  
21 INTERROGATION. I HESITATE TO EVEN CALL IT AN INTERROGATION -- A  
22 NONCUSTODIAL INTERVIEW. MR. TUMMINS WAS IN HIS OWN HOME.  
23 MR. TUMMINS WAS WITH HIS WIFE WHILE THE QUESTIONING DID GO ON  
24 FOR TWO HOURS. THAT WAS, AS THE COURT HAS HEARD, BECAUSE OF  
25 QUESTIONS BACK FROM MR. AND MRS. TUMMINS.

1 PEOPLE WERE MOVING ABOUT THE HOUSE DURING THE  
2 INTERACTION. AND THE OFFICERS TOLD MR. TUMMINS AT LEAST TWICE,  
3 FROM WHAT I CAN TELL IN THIS RECORDING, THAT HE WAS NOT UNDER  
4 ARREST, AND THAT THEY WERE THERE FOR THE COMPUTERS.

5 YOUR HONOR, IF YOU SHOULD YOU FIND THAT THIS INTERVIEW  
6 AT SOME POINT BECAME CUSTODIAL, I RESPECTFULLY REQUEST THAT THE  
7 COURT REVIEW THE TRANSCRIPT AND MAKE A DETERMINATION AS TO WHEN  
8 THAT HAPPENED. AND ANY STATEMENTS ELICITED BY MR. TUMMINS OR  
9 MADE BY MR. TUMMINS PRE-CUSTODY OR PRE-LIMITATION ON HIS FREEDOM  
10 OF MOVEMENT SHOULD NOT BE SUPPRESSED UNDER THE DEFENDANT'S  
11 MOTION.

12 AND I THINK IF YOU LOOK AT OUR BRIEF, YOUR HONOR, THERE  
13 IS SUPPORT FOR THE PROPOSITION THAT PRE-CUSTODY STATEMENTS CAN  
14 BE ADMITTED. ONLY THE UNMIRANDIZED POST-CUSTODY STATEMENTS NEED  
15 BE SUPPRESSED IF THERE WAS, IN FACT, A VIOLATION OF THE FIFTH  
16 AMENDMENT.

17 THE COURT: LET ME ASK YOU, IS THERE A TAPE THAT WAS  
18 THE BASIS FOR THIS TRANSCRIPT AVAILABLE?

19 MR. EVERETT: I HAVE ONE IN THE COURTROOM.

20 THE COURT: IF THERE IS SOME ISSUE THAT -- IF THERE IS  
21 A --

22 MR. EVERETT: MR. POTTER, DO YOU HAVE ANY OBJECTION TO  
23 ME TENDERING THE CD TO THE COURT?

24 MR. POTTER: NO, SIR; I DON'T.

25 THE COURT: WHY DON'T YOU ALL JUST FILE THAT AS A JOINT

1 EXHIBIT, THEN.

2 MR. EVERETT: YES, SIR. SHALL WE DO THAT WITH THE  
3 COURT CLERK AFTER PROCEEDINGS TODAY?

4 THE COURT: YES.

5 MR. EVERETT: DO YOU HAVE ANY QUESTIONS FOR ME, SIR?

6 THE COURT: NO, I THINK YOU HAVE RECOGNIZED WHAT THEY  
7 ARE.

8 MR. EVERETT: THANK YOU, SIR.

9 THE COURT: WE'RE ADJOURNED.

10 \* \* \* \* \*

1 REPORTER'S CERTIFICATE

2  
3 I, PEGGY G. TURNER, OFFICIAL COURT REPORTER FOR  
4 THE UNITED STATES DISTRICT COURT FOR THE MIDDLE  
5 DISTRICT OF TENNESSEE, WITH OFFICES AT NASHVILLE, DO  
6 HEREBY CERTIFY:

7 THAT I REPORTED ON THE STENOGRAPH MACHINE THE  
8 PROCEEDINGS HELD IN OPEN COURT ON APRIL 15, 2011, IN THE MATTER  
9 OF USA V. TUMMINS, CASE NO. 3:10-00009; THAT SAID PROCEEDINGS IN  
10 CONNECTION WITH THE HEARING WERE REDUCED TO TYPEWRITTEN FORM BY  
11 ME; AND THAT THE FOREGOING TRANSCRIPT, PAGES 1 THROUGH 59, IS A  
12 TRUE AND ACCURATE RECORD OF SAID PROCEEDINGS.

13 THIS THE 23RD DAY OF AUGUST, 2011.  
14  
15  
16

17 \_\_\_\_\_  
18 S/PEGGY G. TURNER, RPR  
19 OFFICIAL COURT REPORTER  
20  
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